

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT (IDEA)  
CHAPTER 33 - EDUCATION OF INDIVIDUALS  
WITH DISABILITIES

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# INDIVIDUALS WITH DISABILITIES EDUCATION ACT

## CHAPTER 33—EDUCATION OF INDIVIDUALS WITH DISABILITIES (20 U.S.C. Secs. 1400-1485)

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## SUBCHAPTER I—GENERAL PROVISIONS (PART A)

### Sec. 1400. Congressional statements and declarations

- (a) *Short title*  
This chapter may be cited as the "Individuals with Disabilities Education Act".
- (b) *Findings*  
The Congress finds that—
  - (1) there are more than eight million children with disabilities in the United States today;
  - (2) the special educational needs of such children are not being fully met;
  - (3) more than half of the children with disabilities in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;
  - (4) one million of the children with disabilities in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;
  - (5) there are many children with disabilities throughout the United States participating in regular school programs whose disabilities prevent them from having a successful educational experience because their disabilities are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities;

(8) State and local educational agencies have a responsibility to provide education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law.

#### (c) *Purpose*

It is the purpose of this chapter to assure that all children with disabilities have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

(Pub. L. 91-230, title VI, Sec. 601, Apr. 13, 1970, 84 Stat. 175; Pub. L. 94-142, Sec. 3(a), Nov. 29, 1975, 89 Stat. 774; Pub. L. 101-476, title IX, Secs. 901(a)(1), (b)(1)-(9), Oct. 30, 1990, 104 Stat. 1141, 1142.)

### Sec. 1401. Definitions

- (a) As used in this chapter—
  - (1) The term "children with disabilities" means children—
    - (A) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
    - (B) who, by reason thereof need special education and related services.
  - (2) Repealed. Pub. L. 98-199, Sec. 2(2), Dec. 2, 1983, 97 Stat. 1357.
  - (3) Repealed. Pub. L. 100-630, title I, Sec. 101(a)(2), Nov. 7, 1988, 102 Stat. 3289.
  - (4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this chapter; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of



equipment) of existing structures; or (D) acquisition of land in connection with activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields

which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: Provided, however, That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semi-professional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

The term includes community colleges receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978 [25 U.S.C. 1801 et seq.].

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of children with disabilities, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning



problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation and social work services, and medical and counseling services,<sup>1</sup> including rehabilitation counseling, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

<sup>1</sup> So in original.

(18) The term "free appropriate public education" means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge,

(B) meet the standards of the State educational agency,

(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

(19) The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(20) The term "individualized education program" means a written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include—

(A) a statement of the present levels of educational performance of such child,

(B) a statement of annual goals, including short-term instructional objectives,

(C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs,

(D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities<sup>2</sup> or linkages (or both) before the student leaves the school setting,

<sup>2</sup> So in original. Probably should be "responsibilities".

(E) the projected date for initiation and anticipated duration of such services, and

(F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

(21) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under this subchapter,

(ii) under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.], or

(iii) under title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3281 et seq.], and

(B) any State or local funds expended for programs that would qualify for assistance under such subchapter, chapter, or title.

(22) The term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act. See Reference in Text note below.

(23) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to children with disabilities within that State.

(24)(A) The term "public or private nonprofit agency or organization" includes an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (when acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior.



(B) The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

(C) The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]).

(25) The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(26) The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

(27) The term "underrepresented" means populations such as minorities, the poor, the limited English proficient, and individuals with disabilities.

(b) For purposes of subchapter III of this chapter, "youth with a disability" means any child with a disability (as defined in subsection (a)(1) of this section) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

(Pub. L. 91-230, title VI, Sec. 602, Apr. 13, 1970, 84 Stat. 175; Pub. L. 94-142, Sec. 4(a), Nov. 29, 1975, 89 Stat. 775; Pub. L. 98-199, Secs. 2, 3(b), Dec. 2, 1983, 97 Stat. 1357, 1358; Pub. L. 99-457, title IV, Sec. 402, Oct. 8, 1986, 100 Stat. 1172; Pub. L. 100-630, title I, Sec. 101(a), Nov. 7, 1988, 102 Stat. 3289; Pub. L. 101-476, title I, Sec. 101, title IX, Sec. 901(b)(10)-(20), Oct. 30, 1990, 104 Stat. 1103, 1142.)

## Sec. 1402. Office of Special Education Programs

### (a) *Establishment; purposes*

There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this chapter and other programs and activities concerning the education and training of individuals with disabilities.

(b) *Deputy Assistant Secretary: selection and supervision, compensation; Associate Deputy Assistant Secretary and minimum number of assistants: establishment, compensation*

(1) The office established under subsection (a) of this section shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS-18 of the General Schedule under section 5104 of title 5, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of the Associate Deputy Assistant Secretary. Each such position shall be in grade GS-15 of the General Schedule under section 5104 of title 5.

(Pub. L. 91-230, title VI, Sec. 603, Apr. 13, 1970, 84 Stat. 177; Pub. L. 93-380, title VI, Sec. 612(a), Aug. 21, 1974, 88 Stat. 579; Pub. L. 98-199, Sec. 3(a), Dec. 2, 1983, 97 Stat. 1357.)

## Sec. 1403. Abrogation of State sovereign immunity

(a) A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

(b) In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public entity other than a State.

(c) The provisions of subsections (a) and (b) of this section shall take effect with respect to violations that occur in whole or part after the October 30, 1990.

(Pub. L. 91-230, title VI, Sec. 604, as added Pub. L. 101-476, title I, Sec. 103, Oct. 30, 1990, 104 Stat. 1106.)

## Sec. 1404. Acquisition of equipment and construction of necessary facilities

### (a) *Authorization for use of funds*

In the case of any program authorized by this chapter, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, the Secretary may authorize the use of such funds for such purposes.



*(b) Recovery of payments under certain conditions*

If, within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this chapter the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(Pub. L. 91-230, title VI, Sec. 605, Apr. 13, 1970, 84 Stat. 177; Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, Sec. 101(b), Nov. 7, 1988, 102 Stat. 3290.)

**Sec. 1405. Employment of individuals with disabilities**

The Secretary shall assure that each recipient of assistance under this chapter shall make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this chapter.

(Pub. L. 91-230, title VI, Sec. 606, as added Pub. L. 94-142, Sec. 6(a), Nov. 29, 1975, 89 Stat. 795, and amended Pub. L. 101-476, title IX, Sec. 901(b)(22), (23), Oct. 30, 1990, 104 Stat. 1143.)

**Sec. 1406. Grants for removal of architectural barriers; authorization of appropriations**

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with the Secretary of the Interior and with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968.

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 91-230, title VI, Sec. 607, as added Pub. L. 94-142, Sec. 6(a), Nov. 29, 1975, 89 Stat. 795, and amended Pub. L. 98-199, Secs. 3(b), 5, Dec. 2, 1983, 97 Stat. 1358; Pub. L. 99-457, title IV, Sec. 401, Oct. 8, 1986, 100 Stat. 1172; Pub. L. 100-630, title I, Sec. 101(c), Nov. 7, 1988, 102 Stat. 3290.)

**Sec. 1407. Regulation requirements***(a) Minimum period for comment before effective date*

For purposes of complying with section 1232(b) of this title with respect to regulations promulgated under subchapter II of this chapter, the thirty-day period under such section shall be ninety days.

*(b) Lessening of procedural or substantive protections as in effect on July 20, 1983, prohibited*

The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this chapter which would procedurally or substantively lessen the protections provided to children with disabilities under this chapter, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines,<sup>1</sup> attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

<sup>1</sup> So in original. Probably should be "timeliness".

(Pub. L. 91-230, title VI, Sec. 608, as added Pub. L. 98-199, Sec. 6, Dec. 2, 1983, 97 Stat. 1359, and amended Pub. L. 100-630, title I, Sec. 101(d), Nov. 7, 1988, 102 Stat. 3290; Pub. L. 101-476, Sec. 901(b)(24), Oct. 30, 1990, 104 Stat. 1143.)

**Sec. 1408. Eligibility for financial assistance**

Effective for fiscal years for which the Secretary may make grants under section 1419(b)(1) of this title, no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under subchapters III through VII of this chapter which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 1419(b)(1) of this title.

(Pub. L. 91-230, title VI, Sec. 609, as added Pub. L. 99-457, title II, Sec. 202, Oct. 8, 1986, 100 Stat. 1158.)

**Sec. 1409. Administrative provisions applicable to subchapters III through VII of this chapter and section 1418 of this title**

(a) The Secretary shall maintain a process for developing a program plan for the implementation of each of the programs authorized under section 1418 of this title and subchapters III through VII of this chapter. The plan shall include program goals, objectives, strategies, and priorities. In conducting the process, the Secretary shall involve individuals with disabilities, parents, professionals, and representatives of State and local educational agencies, private schools, institutions of higher education, and national organizations who have interest and expertise in the program.

(b) In awarding grants, contracts, and cooperative agreements under subchapters III through VII of this chapter, the Secretary, where appropriate, shall require applicants to demonstrate how they will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(c) In awarding grants, contracts, or cooperative agreements under subchapters III through VII of this chapter the Secretary, where appropriate, may require applicants to address



the various transitions that a child with a disability may face throughout such child's years in school, including—

(1) the transition from medical care to special education for those children with disabilities, including chronic health impairments, who may require individualized health-related services to enable such children to participate in, or benefit from, special education;

(2) the transition between residential placement and community-based special education services; and

(3) the transition between a separate educational placement and the regular classroom setting.

(d) The Secretary shall conduct directly, or by contract or cooperative agreement with appropriate entities, independent evaluations of the programs authorized under section 1418 of this title and under subchapters III through VII of this chapter, and may for such purpose use funds appropriated to carry out such provisions. The findings of the evaluators shall be utilized in the planning process under subsection (a) of this section for the purpose of improving the programs. The evaluations shall determine the degree to which the program is being conducted consistent with the program plan and meeting its goals and objectives. The Secretary shall submit to the appropriate committees of the Congress the results of the evaluations required by this subsection.

(e) The Secretary shall report on the program plans required in subsection (a) of this section and findings from the evaluations under subsection (d) of this section in the annual report to the Congress required under section 1418 of this title.

(f) The Secretary shall develop effective procedures for acquiring and disseminating information derived from programs and projects funded under subchapters III through VII of this chapter, as well as information generated from studies conducted and data collected under section 1418 of this title.

(g) The Secretary shall, where appropriate, require recipients of all grants, contracts, and cooperative agreements under subchapters III through VII of this chapter, to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under subchapters III and IV of this chapter, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(h)(1) The Secretary shall convene, in accordance with paragraph (2), panels of experts who are competent, by virtue of their training or experience, to evaluate proposals under section 1418 of this title and subchapters III through VII of this chapter.

(2) Panels under paragraph (1) shall be composed of individuals with disabilities, parents of such individuals, individuals from the fields of special education, related services, and other relevant disciplines.

(3) The Secretary shall convene panels under paragraph (1) for any application that includes a total funding request exceeding \$60,000 and may convene or otherwise appoint panels for applications that include funding requests that are less than such amount.

(4) Panels under paragraph (1) shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department of Education and shall be provided consultant fees at such a rate.

(5) The Secretary may use funds available under section 1418 of this title and subchapters III through VII of this chapter to pay expenses and fees of non-Federal members of the panels.

(i) The Secretary shall conduct at least 1 site visit for each grant, contract, and cooperative agreement receiving \$300,000 or more annually under subchapters III through VII of this chapter.

(j)(1) With respect to the discretionary programs authorized by subchapters III through VII of this chapter, the Congress finds as follows:

(A)(i) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(ii) America's racial profile is rapidly changing. While the rate of increase for white Americans is 3.2 percent, the rate of increase for racial and ethnic minorities is much higher: 38.6 percent for Hispanics, 14.6 percent for African-Americans, and 40.1 percent for Asians and other ethnic groups.

(iii) By the year 2000, this Nation will have 260,000,000 people, one of every three of whom will be either African-American, Hispanic, or Asian-American.

(iv) Taken together as a group, it is a more frequent phenomenon for minorities to comprise the majority of public school students. Large city school populations are overwhelmingly minority, e.g., Miami, 71 percent; Philadelphia, 73 percent; Baltimore, 80 percent.

(v) Recruitment efforts within special education at the level of preservice, continuing education, and practice must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

(vi) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited-English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and



placement of limited-English proficient children in special education. The Department of Education has found that services provided to limited-English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

(B)(i) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(ii) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(iii) Poor African-American children are 3.5 times more likely to be identified by their teacher as mentally retarded than their white counterpart.

(iv) Although African-Americans represent 12 percent of elementary and secondary enrollments, they constitute 28 percent of total enrollments in special education.

(v) The drop out rate is 68 percent higher for minorities than for whites.

(vi) More than 50 percent of minority students in large cities drop out of school.

(C)(i) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically Black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

(ii) In 1989, of the 661,000 college and university professors, 4.6 percent were African-American and 3.1 percent were Hispanic. Of the 3,600,000 teachers, prekindergarten through high school, 9.4 percent were African-American and 3.9 percent were Hispanic.

(iii) Students from minority groups comprise more than 50 percent of K-12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

(iv) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

(v) Ten years ago, 12.5 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21.3 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 3 to 5 percent minority, while one-third of the students in public schools are minority children.

(vi) As recently as 1984-85, Historically Black Colleges and Universities (HBCUs) supplied nearly half of the African-American teachers in the Nation. However, in 1988, HBCUs

received only 2 percent of the discretionary funds for special education and related services personnel training.

(vii) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

(viii) In 1986-87, of the degrees conferred in education at the B.A., M.A., and Ph.D levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

(D) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

(2) The Congress further finds that these conditions can be greatly improved by providing opportunities for the full participation of minorities through the implementation of the following recommendations:

(A) Implementation of a policy to mobilize the Nation's resources to prepare minorities for careers in special education and related services.

(B) This policy should focus on—

(i) the recruitment of minorities into teaching; and

(ii) financially assisting HBCUs and other institutions of higher education (whose minority student enrollment is at least 25 percent) to prepare students for special education and related service careers.

(C)(i) The Secretary shall develop a plan for providing outreach services to the entities described in clause (ii) in order to increase the participation of such entities in competitions for grants, contracts, and cooperative agreements under any of subchapters III through VII of this chapter.

(ii) The entities referred to in clause (i) are—

(I) Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent;

(II) eligible institutions as defined in section 312 of the Higher Education Act of 1965 [20 U.S.C. 1058];

(III) nonprofit and for-profit agencies at least 51 percent owned or controlled by one or more minority individuals; and

(IV) underrepresented populations.

(iii) For the purpose of implementing the plan required in clause (i), the Secretary shall, for each of the fiscal years 1991 through 1994, expend 1 percent of the funds appropriated for the fiscal year involved for carrying out subchapters III through VII of this chapter.

(3) The Secretary shall exercise his/her utmost authority, resourcefulness, and diligence to meet the requirements of this subsection.

(4) Not later than January 31 of each year, starting with fiscal year 1991, the Secretary shall submit to Congress a final report on the progress toward meeting the goals of this subsection during the preceding fiscal year. The report shall include—



- (i) a full explanation of any progress toward meeting the goals of this subsection; and
- (ii) a plan to meet the goals, if necessary.

(Pub. L. 91-230, title VI, Sec. 610, as added Pub. L. 101-476, title I, Sec. 104, Oct. 30, 1990, 104 Stat. 1106.)

## SUBCHAPTER II—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN (PART B)

### Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1407, 1422, 1431, 1476, 1477, 4311, 4321, 4342 of this title.

### Sec. 1411. Entitlements and allocations

#### (a) *Formula for determining maximum State entitlement*

(1) Except as provided in paragraph (3) and in section 1419 of this title, the maximum amount of the grant to which a State is entitled under this subchapter for any fiscal year shall be equal to—

(A) the number of children with disabilities aged 3-5, inclusive, in a State who are receiving special education and related services as determined under paragraph (3) if the State is eligible for a grant under section 1419 of this title and the number of children with disabilities aged 6-21, inclusive, in a State who are receiving special education and related services as so determined;

multiplied by—

(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this subchapter for the fiscal year ending September 30, 1977.

(2) For the purpose of this subsection and subsection (b) through subsection (e) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) The number of children with disabilities receiving special education and related services in any fiscal year shall be equal to number of such children receiving special educa-

tion and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

(4) For purposes of paragraph (1)(B), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

(i) children with disabilities aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged three to seventeen, inclusive, in such State and the State serves all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court,<sup>1</sup>

<sup>1</sup> So in original. The comma probably should be a semicolon.

(ii) children with disabilities aged five to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State and the State does not serve all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court; and

(iii) children with disabilities who are counted under subpart 2 of part D of chapter 1 of title 1<sup>2</sup> of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2791 et seq.].

<sup>2</sup> So in original. Probably should read "I"

(B) For purposes of subparagraph (A), the number of children aged three to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

(b) *Distribution and use of grant funds by States for fiscal year ending September 30, 1978*

(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1978—

(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 1412(3) of this title.



(2) Of the funds which any State may use under paragraph (1)(A)—

(A) an amount which is equal to the greater of—

(i) 5 per centum of the total amount of funds received under this subchapter by such State; or

(ii) \$200,000;

may be used by such State for administrative costs related to carrying out sections 1412 and 1413 of this title;

(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 1412(3) of this title.

(c) *Distribution and use of grant funds by States for fiscal years ending September 30, 1979, and thereafter*

(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) except as provided in paragraph (4), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 1412(3) of this title.

(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

(i) an amount which is equal to the greater of—

(I) 5 per centum of the total amount of funds received under this subchapter by such State; or

(II) \$350,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 1412 and 1413 of this title; and

(ii) the part remaining after use in accordance with clause (i) shall be used by the State (I) to provide support services and direct services in accordance with the priorities established under section 1412(3) of this title, and (II) for the administrative costs of monitoring and complaint investigation but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.

(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provisions of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

(3) The provisions of section 1413(a)(9) of this title shall not apply with respect to amounts available for use by any State under paragraph (2).

(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

(i) such local educational agency or intermediate educational unit is entitled, under subsection (d) of this section, to less than \$7,500 for such fiscal year; or

(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 1414 of this title.

(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to children with disabilities residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

(d) *Allocation of funds within States to local educational agencies and intermediate educational units*

From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, as the number of children with disabilities aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of children with disabilities aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this subchapter.

(e) *Territories and possessions*

(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 1400(c) of this title in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this subchapter for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or \$35,000, whichever is greater.

(f) *Indian reservations*



(1) The Secretary shall make payments to the Secretary of the Interior according to the need for assistance for the education of children with disabilities on reservations (A) served by elementary and secondary schools operated for Indian children by the Department of the Interior, and (B) for whom services were provided through contract with an Indian tribe or organization prior to fiscal year 1989. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate amounts available to all States under this section for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which—

(A) meets the applicable requirements of sections 1412, 1413, and 1414(a) of this title,

(B) includes satisfactory assurance that all children with disabilities aged 3 to 5, inclusive, receive a free appropriate public education by or before the 1987-1988 school year,

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and designated local school boards before adoption of the policies, programs, and procedures required under sections 1412, 1413, and 1414(a) of this title, and

(D) is approved by the Secretary.

Section 1416 of this title shall apply to any such application.

(3) Before March 1, 1991, the Secretary of the Interior shall submit to the appropriate Committees of the Congress a plan for the provision of services under this chapter to all children with disabilities residing on reservations, whether or not such reservation is served by a B.I.A. funded school. Such plan shall provide for the coordination of services benefiting these children from whatever source, including Tribes, the State in which the child resides and entities of such State, the Indian Health Service, other B.I.A. divisions and other Federal agencies. In developing such a plan, the Secretary shall consult with all interested and involved parties. Such a plan may not be based upon a blanket assumption or interpretation that denies Federal or Interior responsibility for any group or class of children or settings, but shall be based upon the needs of the children and the system best suited for meeting those needs, and may involve the establishment of service agreements between the B.I.A. and other entities.

(g) *Reductions or increases*

(1) If the sums appropriated under subsection (h) of this section for any fiscal year for making payments to States under subsection (a) of this section are not sufficient to pay in full the total amounts which all States are entitled to receive under subsection (a) of this section for such fiscal year, the maximum amounts which all States are entitled to receive under subsection (a) of this section for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d) of this section, which it estimates that it will expend in accordance with the provisions of this section. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this subchapter, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies or intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(h) *Authorization of appropriations*

For grants under subsection (a) of this section there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 91-230, title VI, Sec. 611, Apr. 13, 1970, 84 Stat. 178; Pub. L. 93-380, title VI, Sec. 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, Secs. 2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 95-561, title XIII, Sec. 1341(a), Nov. 1, 1978, 92 Stat. 2364; Pub. L. 96-270, Sec. 13, June 14, 1980, 94 Stat. 498; Pub. L. 98-199, Secs. 3(b), 15, Dec. 2, 1983, 97 Stat. 1358, 1374; Pub. L. 99-159, title VI, Sec. 601, Nov. 22, 1985, 99 Stat. 904; Pub. L. 99-362, Sec. 2, July 9, 1986, Stat. 769; Pub. L. 99-457, title II, Sec. 201(b), title IV, Secs. 403, 404, Oct. 8, 1986, 100 Stat. 1158, 1173; Pub. L. 100-630, title I, Sec. 102(a), Nov. 7, 1988, 102 Stat. 3290; Pub. L. 101-476, title II, Sec. 201, title IX, Sec. 901(b)(25)-(32), Oct. 30, 1990, 104 Stat. 1111, 1143.)

## Sec. 1412. Eligibility requirements

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all children with disabilities the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to November 29, 1975, and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all children with disabilities, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;



(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 1417(c) of this title; and

(E) any amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all children with disabilities, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to children with disabilities who are not receiving an education, and second with respect to children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each child with a disability, and such program shall be established, reviewed, and revised as provided in section 1414(a)(5) of this title.

(5) The State has established (A) procedural safeguards as required by section 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will

be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and shall meet education standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided children with disabilities in the State.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 1413 of this title.

(Pub. L. 91-230, title VI, Sec. 612, Apr. 13, 1970, 84 Stat. 178; Pub. L. 92-318, title IV, Sec. 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, title VI, Secs. 614(b), (f)(1), 615(a), title VIII, Sec. 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; Pub. L. 94-142, Secs. 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 99-457, title II, Sec. 203(a), Oct. 8, 1986, 100 Stat. 1158; Pub. L. 100-630, title I, Sec. 101(b), Nov. 7, 1988, 102 Stat. 3291; Pub. L. 101-476, title IX, Sec. 901(b)(33)-(46), (c), Oct. 30, 1990, 104 Stat. 1143-44, 1151.)

## Sec. 1413. State plans

### (a) *Requisite features*

Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this subchapter will be expended in accordance with the provisions of this subchapter, with particular attention given to the provisions of sections 1411(b), 1411(c), 1411(d), 1412(2), and 1412(3) of this title;

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, includ-



ing subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2791 et seq.] and section 202(1) of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2332(1)]<sup>1</sup>, under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

<sup>1</sup> See References in Text note below.

(3) describe, consistent with the purposes of this chapter, a comprehensive system of personnel development that shall include—

(A) a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified special education and related services personnel, including—

(i) the development and maintenance of a system for determining, on an annual basis—

(I) the number and type of personnel, including leadership personnel, that are employed in the provision of special education and related services, by area of specialization, including the number of such personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure; and

(II) the number and type of personnel, including leadership personnel, needed, and a projection of the numbers of such personnel that will be needed in five years, based on projections of individuals to be served, retirement and other leaving of personnel from the field, and other relevant factors;

(ii) the development and maintenance of a system for determining, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(I) the numbers of students enrolled in such programs, and

(II) the number who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year; and

(iii) the development, updating, and implementation of a plan that—

(I) will address current and projected special education and related services personnel needs, including the need for leadership personnel; and

(II) coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities; and

(B) a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this subchapter are appropriately and adequately prepared, including—

(i) a system for the continuing education of regular and special education and related services personnel;

(ii) procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(iii) procedures for adopting, where appropriate, promising practices, materials, and technology.

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of children with disabilities in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services; and

(B) that—

(i) children with disabilities in private schools and facilities will be provided special education and related services (in conformance with an individualized education program as required by this subchapter) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring provision of special education and related services to all children with disabilities within such State; and

(ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this subchapter for services to any child who is determined to be erroneously classified as eligible to be counted under section 1411(a) or 1411(d) of this title;

(6) provide satisfactory assurance that the control of funds provided under this subchapter, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;

(7) provide for—

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this subchapter, and

(B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this subchapter;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;



(9) provide satisfactory assurance that Federal funds made available under this subchapter—

(A) will not be commingled with State funds, and

(B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this subchapter and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in part the requirement of this subparagraph if he concurs with the evidence provided by the State;

(10) provide, consistent with procedures prescribed pursuant to section 1417(a)(2) of this title, satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 1417 of this title;

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local education officials, and administrators of programs for children with disabilities, which—

(A) advises the State educational agency of unmet needs within the State in the education of children with disabilities,

(B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this subchapter, and

(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under section 1418 of this title;

(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to—

(A) define the financial responsibility of each agency for providing children and youth with disabilities with free appropriate public education, and

(B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement

from other agencies or otherwise implement the provisions of the agreement; and

(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this subchapter are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(b) *Additional assurances*

Whenever a State educational agency provides free appropriate public education for children with disabilities, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) of this section as are contained in section 1414(a) of this title, except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 1414(a) of this title.

(c) *Notice and hearing prior to disapproval of plan*

(1) The Secretary shall approve any State plan and any modification thereof which—

(A) is submitted by a State eligible in accordance with section 1412 of this title; and

(B) meets the requirements of subsection (a) and subsection (b) of this section.

(2) The Secretary shall disapprove any State plan which does not meet the requirements of paragraph (1), but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

(d) *Participation of children with disabilities in private schools; payment of Federal amount; determinations of Secretary; notice and hearing; judicial review; jurisdiction of court of appeals, petition, record, conclusiveness of findings, remand, review by Supreme Court*

(1) If, on December 2, 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(4) of this section, the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4) of this section.

(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not



exceed the Federal amount provided per child under this subchapter to all children with disabilities enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4) of this section.

(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's<sup>2</sup> action, as provided in section 2112 of title 28.

<sup>2</sup> So in original. Probably should be "his".

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

*(e) Prohibition on reduction of assistance*

This chapter shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq.] with respect to the provision of a free appropriate public education for children with disabilities within the State.

(Pub. L. 91-230, title VI, Sec. 613, Apr. 13, 1970, 84 Stat. 179; Pub. L. 93-380, title VI, Secs. 614(c), (d), 615(b), (c), title VIII, Sec. 843(b)(2), Aug. 21, 1974, 88 Stat. 581, 583, 611; Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 782; Pub. L. 98-199, Secs. 3(b), 7, Dec. 2, 1983, 97 Stat. 1358, 1359; Pub. L. 99-457, title II, Sec. 203(b), title IV, Sec. 405, Oct. 8, 1986, 100 Stat. 1159, 1174; Pub. L. 100-630, title I, Sec. 102(c), Nov. 7, 1988, 102 Stat. 3291; Pub. L. 101-476, title II, Sec. 202, title IX, Sec. 901(b)(47)-(58), Oct. 30, 1990, 104 Stat. 1111, 1144.)

**Sec. 1414. Application**

*(a) Requisite features*

A local educational agency or an intermediate educational unit which desires to receive payments under section 1411(d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

(1) provide satisfactory assurance that payments under this subchapter will be used for excess costs directly attributable to programs which—

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

(B) establish policies and procedures in accordance with detailed criteria prescribed under section 1417(c) of this title;

(C) establish a goal of providing full educational opportunities to all children with disabilities, including—

(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 1413(a)(3) of this title;

(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all children with disabilities, first with respect to children with disabilities who are not receiving an education, and second with respect to children with disabilities, within each disability, with the most severe disabilities who are receiving an inadequate education;

(iii) the participation and consultation of the parents or guardian of such children; and

(iv) to the maximum extent practicable and consistent with the provisions of section 1412(5)(B) of this title, the provision of special services to enable such children to participate in regular educational programs;

(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

(2) provide satisfactory assurance that—



(A) the control of funds provided under this subchapter, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;

(B) Federal funds expended by local educational agencies and intermediate educational units for programs under this subchapter—

(i) shall be used to pay only the excess costs directly attributable to the education of children with disabilities, and

(ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant such State and local funds, and

(C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this subchapter;

(3) provide for—

(A) furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this subchapter, including information relating to the educational achievement of children with disabilities participating in programs carried out under this subchapter; and

(B) keeping such records, and affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subparagraph (A); and

(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability at the beginning of each school year and will then review and, if appropriate, revise its provisions periodically, but not less than annually;

(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title; and

(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 1412(5)(B), 1412(5)(C), and 1415 of this title.

*(b) Approval by State educational agencies of applications submitted by local educational agencies or intermediate educational units; notice and hearing*

(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application meets the requirements of subsection (a) of this section, except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) of this section is approved by the Secretary under section 1413(c) of this title. A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application does not meet the requirements of subsection (a) of this section.

(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

(i) make no further payments to such local educational agency or such intermediate educational unit under section 1420 of this title until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a) of this section.

(B) The provisions of the last sentence of section 1416(a) of this title shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 1415 of this title which is adverse to the local educational agency or intermediate educational unit involved in such decision.

*(c) Consolidated applications*

(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 1411(c)(4)(A)(i) of this title or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to



effectively meet the educational needs of children with disabilities.

(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 1411(d) of this title if an individual application of any such local educational agency had been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this subchapter.

(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this subchapter, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

(d) *Special education and related services provided directly by State educational agencies; regional or State centers*

Whenever a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a) of this section;

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to children with disabilities residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this subchapter.

(e) *Reallocation of funds*

Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational

agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 1411(d) of this title, to such other local educational agencies within the State as are not adequately providing special education and related services to all children with disabilities residing in the areas served by such other local educational agencies.

(f) *Programs using State or local funds*

Notwithstanding the provisions of subsection (a)(2)(B)(ii) of this section, any local educational agency which is required to carry out any program for the education of children with disabilities pursuant to a State law shall be entitled to receive payments under section 1411(d) of this title for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

(Pub. L. 91-230, title VI, Sec. 614, Apr. 13, 1970, 84 Stat. 181; Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 784; Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, Sec. 102(d), Nov. 7, 1988, 102 Stat. 3293; Pub. L. 101-476, title IX, Sec. 901(b)(59)-(70), Oct. 30, 1990, 104 Stat. 1144-45.)

## Sec. 1415. Procedural safeguards

(a) *Establishment and maintenance*

Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

(b) *Required procedures; hearing*

(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a child with a disability to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,



the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

*(c) Review of local decision by State educational agency*

If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

*(d) Enumeration of rights accorded parties to hearings*

Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

(3) the right to a written or electronic verbatim record of such hearing, and

(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 1417(c) of this title and shall also be transmitted to the advisory panel established pursuant to section 1414(a)(12) of this title.

*(e) Civil action; jurisdiction*

(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have

the right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4)(A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if—

(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) the offer is not accepted within ten days; and

(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Whenever the court finds that—

(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing



in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding, the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

*(f) Effect on other laws*

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal statutes protecting the rights of children and youth with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (b)(2) and (c) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(Pub. L. 91-230, title VI, Sec. 615, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 788 and amended Pub. L. 99-372, Secs. 2, 3, Aug. 5, 1986, 100 Stat. 796, 797; Pub. L. 100-630, title I, Sec. 102(e), Nov. 7, 1988, 102 Stat. 3294; Pub. L. 101-476, title IX, Sec. 901(b)(71)-(75), Oct. 30, 1990, 104 Stat. 1145.)

## Sec. 1416. Withholding of payments

*(a) Failure to comply with this subchapter; limitations; public notice*

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 1412 or section 1413 of this title, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this subchapter or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Secretary—

(A) shall, after notifying the State educational agency, withhold any further payments to the State under this subchapter, and

(B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 1413(a)(2) of this title within the Secretary's jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities.

If the Secretary withholds further payments under clause (A) or clause (B) the Secretary may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this subchapter, as specified in clause (1) or clause (2), no further payments shall be made to the State under this subchapter or under the Federal programs specified in section 1413(a)(2) of this title within the Secretary's jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities, or payments by the State educational agency under this subchapter shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

*(b) Judicial review*

(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 1413 of this title, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 91-230, title VI, Sec. 616, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 789, and amended Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, Sec. 102(f), Nov. 7, 1988, 102 Stat.



3294; Pub. L. 101-476, title IX, Sec. 901(b)(76), Oct. 30, 1990, 104 Stat. 1145.)

### Sec. 1417. Administration

#### (a) *Duties of Secretary*

(1) In carrying out the Secretary's duties under this subchapter, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of children with disabilities and the execution of the provisions of this subchapter;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) assure that each State shall, within one year after November 29, 1975 and every year thereafter, provide certification of the actual number of children with disabilities receiving special education and related services in such State.

(2) As soon as practicable after November 29, 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this subchapter in order to assure equity among the States.

#### (b) *Rules and regulations*

In carrying out the provisions of this subchapter, the Secretary shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

#### (c) *Protection of rights and privacy of parents and students*

The Secretary shall take appropriate action, in accordance with the provisions of section 1232g of this title, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this subchapter.

#### (d) *Hiring of qualified personnel*

The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 1418 of this title and to carry out the Secretary's duties under subsection (a)(1) of this section without regard to the provisions of title 5 relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

(Pub. L. 91-230, title VI, Sec. 617, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 791, and amended Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, Sec. 102(g), Nov. 7, 1988, 102 Stat. 3295; Pub. L. 101-476, title IX, Sec. 901(b)(77), (78), Oct. 30, 1990, 104 Stat. 1145.)

### Sec. 1418. Evaluation and program information

(a) The Secretary shall, directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, analyses, and evaluations—

(1) to assess progress in the implementation of this chapter;

(2) to assess the impact and effectiveness of State and local efforts, and efforts by the Secretary of the Interior, to provide—

(A) free appropriate public education to children and youth with disabilities; and

(B) early intervention services to infants and toddlers with disabilities; and

(3) to provide—

(A) Congress with information relevant to policymaking; and

(B) State, local, and Federal agencies, including the Department of the Interior, with information relevant to program management, administration, delivery, and effectiveness with respect to such education and early intervention services.

(b)(1) In carrying out subsection (a) of this section, the Secretary, on at least an annual basis (except as provided in subparagraph (E)), shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to infants, toddlers, children, and youth with disabilities, and such additional information, from State and local educational agencies, the Secretary of the Interior, and other appropriate sources, including designated lead agencies under subchapter VIII of this chapter (except that during fiscal year 1992 such entities may not under this subsection be required to provide data regarding traumatic brain injury or autism), including—

(A) the number of infants, toddlers, children, and youth with disabilities in each State receiving a free appropriate public education or early intervention services—

(i) in age groups 0-2 and 3-5, and

(ii) in age groups 6-11, 12-17, and 18-21, by disability category;

(B) the number of children and youth with disabilities in each State, by disability category, who—

(i) are participating in regular educational programs (consistent with the requirements of section 1412(5)(B) and 1414(a)(1)(C)(iv) of this title);

(ii) are in separate classes, separate schools or facilities, or public or private residential facilities; or

(iii) have been otherwise removed from the regular education environment;

(C) the number of children and youth with disabilities exiting the educational system each year through program completion or otherwise, by disability category, for each year of age from age 14 through 21;

(D) the number and type of personnel that are employed in the provision of—



(i) special education and related services to children and youth with disabilities, by disability category served; and

(ii) early intervention services to infants and toddlers with disabilities; and

(E) at least every three years, using the data collection method the Secretary finds most appropriate, a description of the services expected to be needed, by disability category, for youth with disabilities in age groups 12-17 and 18-21 who have left the educational system.

(2) Beginning with fiscal year 1993, the Secretary shall obtain and report data from the States under section 1413(a)(3)(A) of this title, including data addressing current and projected special education and related services needs, and data on the number of personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure, and other data for the purpose of meeting the requirements of this subsection pertaining to special education and related services personnel.

(3) The Secretary shall provide, directly or by grant, contract, or cooperative agreement, technical assistance to State agencies providing the data described in paragraphs (1) and (2) to achieve accurate and comparable information.

(c)(1) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, public agencies, and private nonprofit organizations, and, when necessary because of the unique nature of the study, private-for-profit organizations, for the purpose of conducting studies, analyses, syntheses, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21. Such studies and investigations shall gather information necessary for program and system improvements including—

(A) developing effective, appropriate criteria and procedures to identify, evaluate, and serve infants, toddlers, children, and youth with disabilities from minority backgrounds for purposes of program eligibility, program planning, delivery of services, program placement, and parental involvement;

(B) planning and developing effective early intervention services, special education, and related services to meet the complex and changing needs of infants, toddlers, children, and youth with disabilities;

(C) developing and implementing a comprehensive system of personnel development needed to provide qualified personnel in sufficient number to deliver special education, related services, and early intervention services;

(D) developing the capacity to implement practices having the potential to integrate children with disabilities, to the maximum extent appropriate, with children who are not disabled;

(E) effectively allocating and using human and fiscal resources for providing early intervention, special education, and related services;

(F) strengthening programs and services to improve the progress of children and youth with disabilities while in special education, and to effect a successful transition when such children and youth leave special education;

(G) achieving interagency coordination to maximize resource utilization and continuity in services provided to infants, toddlers, children, and youth with disabilities;

(H) strengthening parent-school communication and coordination to improve the effectiveness of planning and delivery of interventions and instruction, thereby enhancing development and educational progress; and

(I) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice.

(2)(A) The studies and investigations authorized under this subsection may be conducted through surveys, interviews, case studies, program implementation studies, secondary data analyses and syntheses, and other appropriate methodologies.

(B) The studies and investigations conducted under this subsection shall address the information needs of State and local educational agencies for improving program management, administration, delivery, and effectiveness.

(3) The Secretary shall develop and implement a process for the on-going identification of national program information needed for improving the management, administration, delivery, and effectiveness of programs and services provided under this Act. The process shall identify implementation issues, desired improvements, and information needed by State and local agencies to achieve such improvements, and shall be conducted in cooperation with State educational agencies that can ensure broad-based statewide input from each cooperating State. The Secretary shall publish for public comment in the Federal Register every 3 years a program information plan describing such information needs. Such program information plan shall be used to determine the priorities for, and activities carried out under, this subsection to produce, organize, and increase utilization of program information. Such program information plan shall be included in the annual report submitted under section 1418 of this title every 3 years.

(4) In providing funds under this subsection, the Secretary shall require recipients to prepare their procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by this Act, and in a form for inclusion in the annual report to Congress authorized under subsection (g) of this section.

(d)(1) The Secretary shall enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs, policies, and procedures assisted under this Act.

(2) The agreements referred to in paragraph (1) shall—

(A) provide for the payment of not more than 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of this Act; and



(B) be developed in consultation with the State Advisory Panel established under section 1413(a)(12) of this title, local educational agencies, and others involved in, or concerned with, the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

(e)(1) The Secretary shall by grant, contract, or cooperative agreement, provide for special studies to assess progress in the implementation of this Act, and to assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. Reports from such studies shall include recommendations for improving programs and services to such individuals. The Secretary shall, beginning in fiscal year 1993 and for every third year thereafter, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed priorities for review and comment.

(2) In selecting priorities for fiscal years 1991 through 1994, the Secretary may give first consideration to—

(A) completing a longitudinal study of a sample of students with disabilities, examining—

(i) the full range of disabling conditions;

(ii) the educational progress of students with disabilities while in special education; and

(iii) the occupational, educational, and independent living status of students with disabilities after graduating from secondary school or otherwise leaving special education.

(B) conducting pursuant to this subsection a nationally representative study focusing on the types, number, and intensity of related services provided to children with disabilities by disability category.

(C) conducting pursuant to this subsection a study that examines the degree of disparity among States with regard to the placement in various educational settings of children and youth with similar disabilities, especially those with mental retardation, and, to the extent that such disparity exists, the factors that lead such children and youth to be educated in significantly different educational settings.

(D) conducting pursuant to this subsection a study that examines the factors that have contributed to the decline in the number of children classified as mentally retarded since the implementation of this Act, and examines the current disparity among States in the percentage of children so classified.

(E) conducting pursuant to this subsection a study that examines the extent to which out-of-community residential programs are used for children and youth who are seriously emotionally disturbed, the factors that influence the selection of such placements, the degree to which such individuals transition back to education programs in their communities, and the factors that facilitate or impede such transition.

(F) conducting pursuant to this subsection a study that examines (i) the factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children, (ii) the extent to which these children are placed in regular education environments, (iii) the extent to which the parents of these children are involved in placement decisions and in the development and implementation of the individualized education program and the results of such participation, and (iv) the type of support provided to parents of these children that enable these parents to understand and participate in the educational process.

(f) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations to support activities that organize, synthesize, interpret, and integrate information obtained under subsections (c) and (e) of this section with relevant knowledge obtained from other sources. Such activities shall include the selection and design of content, formats, and means for communicating such information effectively to specific or general audiences, in order to promote the use of such information in improving program administration and management, and service delivery and effectiveness.

(g)(1)(A) The Secretary is authorized to conduct activities, directly or by grant, contract, or cooperative agreement, to prepare an annual report on the progress being made toward the provision of—

(i) a free appropriate public education to all children and youth with disabilities; and

(ii) early intervention services for infants and toddlers with disabilities.

(B) Not later than 120 days after the close of each fiscal year, the Secretary shall transmit a copy of the report authorized under subparagraph (A) to the appropriate committees of each House of Congress. The annual report shall be published and disseminated in sufficient quantities to the education and disability communities and to other interested parties.

(2) The Secretary shall include in each annual report under paragraph (1)—

(A) a compilation and analysis of data gathered under subsection (b) of this section and under subchapter VIII of this chapter; and

(B) a description of findings and determinations resulting from monitoring reviews of State implementation of this subchapter.

(3) In the annual report under paragraph (1) for fiscal year 1991 (which is published in 1992) and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under subchapters III and VII of this chapter; and

(B) data reported under sections 1422 and 1434 of this title.



(4) The Secretary shall include in each annual report under paragraph (1) the results of research and related activities conducted under subchapter V of this chapter that the Secretary determines are relevant to the effective implementation of this Act.

(5) The Secretary shall, in consultation with the National Council on Disability and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, include a description of the status of early intervention services for infants and toddlers with disabilities from birth through age 2, and special education and related services to children with disabilities from 3 through 5 years of age (including those receiving services through Head Start, developmental disabilities programs, crippled children's services, mental health/mental retardation agencies, and State child-development centers and private agencies under contract with local schools).

(h) There are authorized to be appropriated \$12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1994 to carry out the purposes of this section and not more than 30 percent may be used to carry out the purposes of subsection (e) of this section.

(Pub. L. 91-230, title VI, Sec. 618, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 791, and amended Pub. L. 98-199, Secs. 3(b), 8, Dec. 2, 1983, 97 Stat. 1358, 1360; Pub. L. 99-457, title IV, Sec. 406, Oct. 8, 1986, 100 Stat. 1174; Pub. L. 100-630, title I, Sec. 102(h), Nov. 7, 1988, 102 Stat. 3295; Pub. L. 101-476, title II, Sec. 203, Oct. 30, 1990, 104 Stat. 1112.)

## Sec. 1419. Pre-school grants

(a) *Grants for fiscal years 1987 through 1989; amount of grants*

(1) For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

(A) has met the eligibility requirements of section 1412 of this title,

(B) has a State plan approved under section 1413 of this title, and

(C) provides special education and related services to children with disabilities aged three to five, inclusive.

(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

(i) \$300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 1411(a)(3) of this title, or

(ii) if the amount appropriated under subsection (e) of this section exceeds the product of \$300 and the total number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 1411(a)(3) of this title—

(I) \$300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 1411(a)(3) of this title, plus

(II) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of children with disabilities aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated increase in the number of such children in such State.

(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be \$400 instead of \$300.

(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be \$500 instead of \$300.

(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed \$1,000 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 1411(a)(3) of this title.

(E) If the actual number of additional children served in a fiscal year differs from the estimate made under subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed \$3,800 per estimated child with a disability aged three to five, inclusive, who will be receiving or child with a disability, age three to five, inclusive, who is receiving special education and related services in such State.

(ii) If the amount appropriated under subsection (e) of this section for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) *Grants for fiscal year 1990 and thereafter; amount of grants*

(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

(A) has met the eligibility requirements of section 1412 of this title, and

(B) has a State plan approved under section 1413 of this title which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all children with disabilities aged three to five, inclusive.

(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—



(A) the aggregate amount that was appropriated under subsection (e) of this section for fiscal years 1987, 1988, and 1989 was less than \$656,000,000, or

(B) the amount appropriated for fiscal year 1990 under subsection (e) of this section is less than \$306,000,000, the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) of this section for fiscal year 1990.

(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed \$1,000 for each child with a disability in such State aged three to five, inclusive.

(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

*(c) Distribution by State of funds*

(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) of this section shall—

(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 1423(b) of this title in effect through fiscal year 1987 and for direct and support services for children with disabilities, and

(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) of this section shall—

(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

(B) use not more than 20 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 1423(b) of this title in effect through fiscal year 1987 and for direct and support services for children with disabilities, and

(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

(A) an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(i) of this section or subsection (a)(2)(A)(ii)(I) of this section, as the case may be, as the number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 1411(a)(3) of this title in such

local educational agency or intermediate educational unit bears to the aggregate number of children with disabilities aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II) of this section, an amount which bears the same ratio to the amount of such funds as the estimated number of additional children with disabilities aged three to five, inclusive, who will be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of such children in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

*(d) Insufficiency of appropriated amounts; reduction of maximum amounts receivable by States*

If the sums appropriated under subsection (e) of this section for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) of this section are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II) of this section. If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

*(e) Authorization of appropriations*

For grants under subsections (a)(1) and (b)(1) of this section there are authorized to be appropriated such sums as may be necessary.

*(f) Availability of appropriations*

Notwithstanding any other provision of law, unless enacted in express limitation of this subsection, amounts appropriated under this section for fiscal years 1987 and 1988 and received by a State whose allotment for the succeeding fiscal year is adjusted downwards under subsection (a)(2)(E) of this section shall remain available for obligation by such State, and by local educational agencies and intermediate educational units in such State, during the 2 fiscal years succeeding the fiscal year for which such amounts were appropriated.

(Pub. L. 91-230, title VI, Sec. 619, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 793, and amended Pub. L. 98-199, Secs. 3(b), 9, Dec. 2, 1983, 97 Stat. 1358, 1363; Pub. L. 99-457, title II, Sec. 201(a), Oct. 8, 1986, 100 Stat. 1155; Pub. L. 100-630, title I, Sec. 102(i), Nov. 7, 1988, 102 Stat. 3296; Pub. L. 101-476, title IX, Sec. 901(b)(79)-(93), Oct. 30, 1990, 104 Stat. 1145.)

## Sec. 1420. Payments

*(a) Payments to States; distribution by States to local educational agencies and intermediate educational units*



The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this subchapter. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this subchapter after the State educational agency has approved applications of such agencies or units for payments in accordance with section 1414(b) of this title.

(b) *Advances, reimbursements, and installments*

Payments under this subchapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

(Pub. L. 91-230, title VI, Sec. 620, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 793, and amended Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358.)

### SUBCHAPTER III—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF INDIVIDUALS WITH DISABILITIES (PART C)

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1401, 1408, 1418, 1443 of this title.

#### Sec. 1421. Regional resource and Federal centers

(a) *Establishment; functions*

The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers that focus on special education and related services and early intervention services. Each regional resource center shall provide consultation, technical assistance, and training, as requested, to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center. Each regional resource center established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for children and youth with disabilities and early intervention services to infants and toddlers with disabilities and their families,

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to children and youth with

disabilities and their families and early intervention services to infants and toddlers with disabilities and their families,

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant programs and projects conducted under subchapters III through VII of this chapter and by the Department of Education,

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of infants, toddlers, children, and youth with disabilities, and

(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this subchapter and subchapters IV through VII of this chapter.

(b) *Considerations governing approval of application*

In determining whether to approve an application for a project under subsection (a) of this section, the Secretary shall utilize criteria for setting criteria that are consistent with the needs identified by States within the region served by such center, consistent with requirements established by the Secretary under subsection (f) of this section, and, to the extent appropriate, consistent with requirements under section 1409 of this title, and shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a) of this section.

(c) *Annual report; summaries*

Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 1418 of this title.

(d) *Coordinating technical assistance center*

The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of technical assistance, consistent with such national priorities. Such coordinating technical assistance center is authorized to—

(1) provide information to, and training for, agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this subchapter and subchapters IV through VII of this chapter, and shall make such information available to the regional resource centers on request;

(2) give priority to providing technical assistance concerning the education of children with disabilities from minority backgrounds;

(3) exchange information with, and, where appropriate, cooperate with, other centers addressing the needs of children with disabilities from minority backgrounds; and

(4) provide assistance to State educational agencies, through the regional resource centers, for the training of hearing officers.



*(e) Amounts available for centers*

Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d) of this section, not less than the amount made available in the previous fiscal year for regional resource centers under subsection (a) of this section shall be made available for such centers and in no case shall more than \$500,000 be made available for the center under subsection (d) of this section.

(f)(1) The Secretary shall develop guidelines and criteria for the operation of Regional and Federal Resource Centers. In developing such criteria and guidelines, the Secretary shall establish a panel representing the Office of Special Education Programs staff, State special education directors, representatives of disability advocates, and, when appropriate, consult with the regional resource center directors.

(2) Such guidelines and criteria shall include—

(A) a description of how the Federal and Regional Resource Centers Program will be administered by the Secretary;

(B) a description of the geographic region each Center is expected to serve;

(C) a description of the role of a Center in terms of expected leadership and dissemination efforts;

(D) a description of expected relationships with State agencies, research and demonstration centers, and with other entities deemed necessary;

(E) a description of how a Center will be evaluated; and

(F) other guidelines and criteria deemed necessary.

(3) The Secretary shall publish in the Federal Register by July 1, 1991, for review and comment, proposed and (then following such review and comment) final guidelines developed by the panel.

(Pub. L. 91-230, title VI, Sec. 621, Apr. 13, 1970, 84 Stat. 181; Pub. L. 98-199, Secs. 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1363; Pub. L. 99-457, title III, Sec. 301, Oct. 8, 1986, 100 Stat. 1159; Pub. L. 100-630, title I, Sec. 103(b), Nov. 7, 1988, 102 Stat. 3296; Pub. L. 101-476, title III, Sec. 301, title IX, Sec. 901(b)(95)-(99), Oct. 30, 1990, 104 Stat. 1117, 1146.)

**Sec. 1422. Services for deaf-blind children and youth**

*(a) Grant and contract authority; types and scope of programs; governing considerations*

(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies<sup>1</sup> local educational agencies, and designated lead agencies under subchapter VII of this chapter to—

(A) assure deaf-blind infants, toddlers, children and youth provision of special education and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth (who are in the process of transitioning into adult services) programs, services, and supports to facilitate such transition, including assistance related to independent living and competitive employment.

<sup>1</sup> So in original. Probably should be comma following "agencies".

(2) For purposes of this section, the term "deaf-blind", with respect to children and youth, means having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated in special education programs solely for children and youth with hearing impairments, visual impairments, or severe disabilities, without supplementary assistance to address their educational needs due to these dual, concurrent disabilities.

(3)(A) A grant, cooperative agreement, or contract may be made under paragraph (1)(A) only for programs providing—

(i) technical assistance to agencies, institutions, or organizations providing educational or early intervention services to deaf-blind infants, toddlers, children, or youth;

(ii) preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind infants, toddlers, children, or youth;

(iii) replication of successful innovative approaches to providing educational, early intervention, or related services to deaf-blind infants, toddlers, children, and youth;

(iv) pilot projects that are designed to—

(I) expand local educational agency capabilities by providing services to deaf-blind children and youth that supplement services already provided to children and youth through State and local resources; and

(II) encourage eventual assumption of funding responsibility by State and local authorities;

(v) the development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment and education of deaf-blind infants, toddlers, children, and youth; or

(vi) facilitation of parental involvement in the education of their deaf-blind infants, toddlers, children, and youth.

(B) The programs described in subparagraph (A) may include—

(i) the diagnosis and educational evaluation of infants, toddlers, children, and youth who are likely to be diagnosed as deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind infants, toddlers, children, and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind infants, toddlers, children, and youth.

(4) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations that are preparing deaf-blind adolescents for adult placements, or that are preparing to receive deaf-blind young adults into adult living and work environments, or that serve, or propose to serve, deaf-blind individuals; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, supervised, semisupervised, or independent living programs.



(5) In carrying out this subsection, the Secretary is authorized to enter into a number of grants or cooperative agreements to establish and support single and multi-State centers for the provision of technical assistance and pilot supplementary services, for the purposes of program development and expansion, for children and youth with deaf-blindness and their families.

(b) *Contract authority for regional programs of technical assistance*

The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

(c) *Annual report to Secretary; examination of numbers and services and revision of numbers; annual report to Congress: summary of data*

(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, sex, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; (C) the types of services provided and the setting in which the services are provided; and (D) student outcomes, where appropriate.

(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under subchapter II of this chapter and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2791 et seq.]; and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 1418 of this title.

(d) The Secretary shall make a grant, or enter into a contract or cooperative agreement, for a national clearinghouse for children and youth with deaf-blindness—

(1) to identify, coordinate, and disseminate information on deaf-blindness, emphasizing information concerning effective practices in working with deaf-blind infants, toddlers, children, and youth;

(2) to interact with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services;

(3) to maintain a computerized data base on local, regional, and national resources; and

(4) to respond to information requests from professionals, parents, and members of the community.

(e) In carrying out this section, the Secretary shall take into consideration the availability and quality of existing services for deaf-blind infants, toddlers, children, and youth in the country, and, to the extent practicable, ensure that all parts of the country have an opportunity to receive assistance under this section.

(f) *Grants to, or contracts and cooperative agreements with, appropriate organizations or institutions*

The Secretary may make grants to, or enter into contracts or cooperative agreements with organizations or public or non-profit private agencies, as determined by the Secretary to be appropriate, to address the needs of children and youth with deaf-blindness, for—

(1) research to identify and meet the full range of special needs of such children and youth; and

(2) the development and demonstration of new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of children and youth with deaf-blindness.

(Pub. L. 91-230, title VI, Sec. 622, Apr. 13, 1970, 84 Stat. 182; Pub. L. 98-199, Secs. 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1364; Pub. L. 99-457, title III, Sec. 302, Oct. 8, 1986, 100 Stat. 1160; Pub. L. 100-630, title I, Sec. 103(c), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, Sec. 302, Oct. 30, 1990, 104 Stat. 1118.)

## Sec. 1423. Early education for children with disabilities

(a) *Contracts, grants, and cooperative agreements; purpose; coordination with community programs; national dispersion in urban and rural areas; Federal share; non-Federal contributions; arrangements with Indian tribes*

(1) The Secretary may arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for children with disabilities which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special needs of these children. Such programs shall include activities and services designed to—

(A) facilitate the intellectual, emotional, physical, mental, social, speech or other communication mode and, language development, and self-help skills of such children,

(B) provide family education and include a parent or their representative of such child, as well as encourage the participation of the parents of such children in the development and operation of any such program,

(C) acquaint the community to be served by any such program with the special needs and potentialities of such children,

(D) offer training about exemplary models and practices, including interdisciplinary models and practices, to State and local personnel who provide services to children with disabilities from birth through age eight and to the parents of such children,

(E) support the adoption of exemplary models and practices in States and local communities, including the involvement of adult role models with disabilities at all levels of the program,

(F) facilitate and improve the early identification of infants and toddlers with disabilities or those infants and toddlers at risk of having developmental disabilities,



(G) facilitate the transition of infants with disabilities or infants at risk of having developmental delays, from medical care to early intervention services, and the transition from early intervention services to preschool special education or regular education services (especially where the lead agency for early intervention programs under subchapter VIII of this chapter is not the State educational agency),

(H) promote the use of assistive technology devices and assistive technology services, where appropriate, to enhance the development of infants and toddlers with disabilities, and

(I) increase the understanding of, and address, the early intervention and preschool needs of children exposed prenatally to maternal substance abuse.

(2) Programs authorized by paragraph (1) shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served and with similar programs operated by other public agencies in such community.

(3) As much as is feasible, programs assisted under paragraph (1) shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4)(A) Except as provided in subparagraph (B), no arrangement under paragraph (1) shall provide for the payment of more than 90 percent of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(B) The Secretary may waive the requirement of subparagraph (A) in the case of an arrangement entered into under paragraph (1) with governing bodies of Indian tribes located on Federal or State reservations and with consortia of such bodies.

*(b) Technical assistance development system*

The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to children with disabilities. This technical assistance development system shall provide assistance to parents of and advocates for infants, toddlers, and children with disabilities, as well as direct service and administrative personnel involved with such children. Information from the system should be aggressively disseminated through established information networks and other mechanisms to ensure both an impact and benefits at the community level. The Secretary shall ensure that the technical assistance provided under this subsection includes assistance to subchapter VIII State agencies on procedures for use by primary referral sources in referring a child to the appropriate agency within the system for evaluation, assessment, or service.

*(c) Early childhood research institutes*

The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private

nonprofit organizations for the establishment of early childhood research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for children with disabilities and their families. Such institutes shall disseminate this information in the manner prescribed in section 1409(g) of this title.

*(d) Grants or contracts with organizations to identify needs of children with disabilities and for training of personnel*

The Secretary may make grants to, or enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of children with disabilities and for training of personnel for programs specifically designed for children with disabilities, including programs to integrate children with disabilities into regular preschool programs.

*(e) Notice in Federal Register of intent to accept application for grants, contracts, etc.*

At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (b) and (c) of this section, the Secretary shall publish in the Federal Register a notice of intent to accept applications for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

*(f) "Children with disabilities" defined*

For purposes of this section the term "children with disabilities" includes children from birth through eight years of age, including infants and toddlers with disabilities.

(g) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education and nonprofit private organizations to synthesize the knowledge developed under this section and organize, integrate, and present such knowledge so it can be incorporated and imparted to parents, professionals, and others providing or preparing to provide preschool or early intervention services and to persons designing preschool or early intervention programs.

(Pub. L. 91-230, title VI, Sec. 623, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, Secs. 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1365; Pub. L. 99-457, title III, Sec. 303, Oct. 8, 1986, 100 Stat. 1161; Pub. L. 100-630, title I, Sec. 103(d), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, Sec. 303, title IX, Sec. 901(b)(100)-(106), Oct. 30, 1990, 104 Stat. 1121, 1146.)

**Sec. 1424. Programs for children with severe disabilities**

*(a) Grant and contract authority*

The Secretary may make grants to, or enter into contracts or cooperative agreements with, appropriate public agencies and nonprofit organizations to address the special education, related services, early intervention, and integration needs of infants, toddlers, children, and youth with severe disabilities through—

(1) research to identify and meet the full range of special education, related services, and early intervention needs,



including transportation to and from school of such children and youth with disabilities,

(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of such children and youth with disabilities,

(3) training of special and regular education, related services, and early intervention personnel for programs specifically designed for such infants, toddlers, children and youth, including training of regular teachers, instructors, and administrators in strategies (the goal of which is to serve infants, toddlers, children, and youth with disabilities) that include integrated settings for educating such children along side their nondisabled peers,

(4) dissemination of materials and information about practices found effective in working with such children and youth by utilizing existing networks as prescribed in section 1409(g) of this title and

(5) statewide projects, in conjunction with the State's plan under subchapter II of this chapter, to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

(b) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or private nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for infants, toddlers, children, and youth with severe disabilities.

(c) *Coordination of activities with similar activities under other provisions*

In making grants and entering into contracts and cooperative agreements under subsection (a) of this section, the Secretary shall ensure that the activities funded under such grants, contracts, or cooperative agreements will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

(d) *National geographic dispersion of programs in urban and rural areas*

To the extent feasible, programs authorized by subsection (a) of this section shall be geographically dispersed throughout the Nation in urban and rural areas.

(e) In awarding such grants and contracts under this section, the Secretary shall include a priority on programs that increase the likelihood that these children and youth will be educated with their nondisabled peers.

(Pub. L. 91-230, title VI, Sec. 624, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, Secs. 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1366; Pub. L. 99-457, title III, Sec. 304, Oct. 8, 1986, 100 Stat. 1162; Pub. L. 100-630, title I, Sec. 103(e), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, Sec. 304, title IX, Sec. 904(b)(107)-(110), Oct. 30, 1990, 104 Stat. 1122, 1147.)

## Sec. 1424a. Postsecondary education

(a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of

higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Such model programs may include joint projects that coordinate with special education and transition services.

(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with disabling conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of individuals with disabilities,

(B) for programs that coordinate, facilitate, and encourage education of individuals with disabilities with their nondisabled peers; and

(C) for outreach activities that include the provision of technical assistance to strengthen efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities.

(3) Persons operating programs for persons with disabilities under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 1433(b) of this title.

(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept applications for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

(6) Of the sums made available for programs under paragraph (1), not less than \$4,000,000 shall first be available for the 4 regional centers for the deaf.

(b) For purposes of subsection (a) of this section, the term "individuals with disabilities" means individuals—

(1) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(2) who, by reason thereof, need special education and related services.

(Pub. L. 91-230, title VI, Sec. 625, as added Pub. L. 93-380, title VI, Sec. 616, Aug. 21, 1974, 88 Stat. 584, and amended Pub. L. 98-199, Secs. 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367; Pub. L. 99-457, title III, Sec. 305, Oct. 8, 1986, 100 Stat. 1162; Pub. L. 100-630, title I, Sec. 103(f), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, Sec. 305, title IX, Sec. 904(b)(111)-(118), 104 Stat. 1123, 1147.)



**Sec. 1425. Secondary education and transitional services for youth with disabilities***(a) Grant and contract authority; statement of purposes; national geographic dispersion in urban and rural areas*

The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act [29 U.S.C. 1501 et seq.]) to—

(1) strengthen and coordinate special education and related services for youth with disabilities currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, independent and community living, or adult services,

(2) stimulate the improvement and development of programs for secondary special education, and

(3) stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to adult life and services.

To the extent feasible, such programs shall be geographically dispersed throughout the Nation in urban and rural areas.

*(b) Description of specific projects*

Projects assisted under subsection (a) of this section may include—

(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education, and competitive employment (including supported employment) for youth with disabilities,

(2) establishing demonstration models for services, programs, and individualized education programs, which emphasize vocational training, independent living, transitional services, and placement for youth with disabilities,

(3) conducting demographic studies which provide information on the numbers, age levels, types of disabling conditions, and services required for youth with disabilities in need of transitional programs,

(4) specially designed vocational programs to increase the potential for competitive employment for youth with disabilities,

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models,

(6) initiating cooperative models among educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment, and employers, which facilitate the planning and developing of transitional services for youth with disabilities to postsecondary education, vocational training, employment, continuing education, and adult services,

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for youth with disabilities,

(8) conducting studies which provide information on the numbers, age levels, types of disabling conditions and reasons why some youth with disabilities remain to complete school programs while others drop out,

(9) developing curriculum and instructional techniques in special education and related services that will improve the acquisition of skills by students with disabilities necessary for transition to adult life and services,

(10) specially designed or adapted physical education and therapeutic recreation programs to facilitate the full participation of youths with disabilities in community programs, and

(11) developing and disseminating exemplary programs and practices that meet the unique needs of students who utilize assistive technology devices and assistive technology services as such students make the transition to postsecondary education, vocational training, competitive employment (including supported employment), and continuing education or adult services.

*(c) Coordination of noneducational agency applicant with State educational agency*

For purposes of paragraphs (1) and (2) of subsection (b) of this section, if an applicant is not an educational agency, such applicant shall coordinate its activities with the State educational agency.

*(d) Applications for assistance; contents*

Applications for assistance under subsection (a) of this section other than for the purpose of conducting studies or evaluations shall—

(1) describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations,

(2) describe the procedures that will be used for coordinating services among agencies for which youth with disabilities are or will be eligible, and

(3) provide for the direct participation of students with disabilities and the parents of students with disabilities in the planning, development, and implementation of such projects.

(e)(1) The Secretary shall make one-time, 5-year grants, on a competitive basis, to States in which the State vocational rehabilitation agency and State educational agency submit a joint application to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

(2) In the case of a State whose vocational rehabilitation agency does not participate regarding a joint application described in paragraph (1), the Secretary may make a grant under such paragraph to the State if a joint application for the grant is submitted by the State educational agency and one other State agency that provides transition services to individuals who are leaving programs under this Act.

(3) States that receive grants shall use grant funds to:



(A) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as such youth prepare for and enter adult life.

(B) Improve the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult".

(C) Improve working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA), and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

(D) Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

(4)(A) In order to receive funding under this subsection, a State vocational rehabilitation agency and State educational agency shall describe in their application how they will use the first year, if necessary, to plan how to implement transition services, the second through fourth years to develop and implement transition services, and the fifth year to evaluate transition services. The application shall describe how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services. Such applications shall also include—

(i) a description of the current availability, access, and quality of transition services for eligible youth and a description of how, over 5 years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as such youth prepare for and enter adult life;

(ii) a description of how the State will improve and increase the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult";

(iii) a description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the JTPA, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities; and

(iv) a description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

(B) The Secretary shall give preference to those applications that, in addition to clearly addressing the requirements under subparagraph (A), describe how the State will—

(i) target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

(ii) target a substantial amount of grant funds, received under this subsection, to case management, program evaluation and documentation of, and dissemination of information about, transition services;

(iii) provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with PICS authorized by the JTPA and local branches of State employment agencies;

(iv) provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for such youth, and advocates for such youth as well as PICS authorized by the JTPA and local branches of State employment agencies;

(v) provide for the early and direct involvement of all relevant parties, including PICS authorized by the JTPA and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

(vi) provide access to training for eligible youth that matches labor market needs in their communities;

(vii) integrate transition services with relevant opportunities in communities, including those sponsored by PICS authorized by the JTPA and local employment agencies;

(viii) use a transition services evaluation plan that is outcome oriented and that focuses on individual youth-focused benefits; and

(ix) ensure that, when appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 [29 U.S.C. 730] and/or title VI [29 U.S.C. 795 et seq.], subchapter III program authorized under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.].

(f) *Development or demonstration of new or improved methods, approaches, or techniques*

(1) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of children and youth with disabilities and the dissemination of materials and information concerning practices found effective.



tive in working with such children and youth. Such organizations and institutions shall disseminate such materials and information as prescribed under section 1409(g) of this title.

(2) The Secretary shall fund one or more demonstration models designed to establish appropriate methods of providing, or continuing to provide, assistive technology devices and services to secondary school students as they make the transition to vocational rehabilitation, employment, postsecondary education, or adult services. Such demonstration models shall include, as appropriate—

(A) cooperative agreements with the Rehabilitation Services Administration and/or State vocational rehabilitation agencies that ensure continuity of funding for assistive technology devices and services to such students; and

(B) methods for dissemination of exemplary practices that can be adapted or adopted by transitional programs for secondary school students with disabilities.

(3)(A) The Secretary shall award one, five-year cooperative agreement through a separate competition to an institution of higher education, or nonprofit public or private organization. The purpose of this agreement will be to evaluate and document the approaches and outcomes of the projects funded under subsection (e) of this section. The results of this agreement shall be disseminated through the appropriate clearinghouses, networks, and through direct communication with Federal, State, and local agencies.

(B) The evaluation carried out pursuant to subparagraph (A) of transition services under subsection (e) of this section shall include an evaluation of—

(i) the outcomes of the transition services provided under such subsection, including the effect of the services regarding postsecondary education, job training, employment, and other appropriate matters;

(ii) the impact of including in the individualized education program a statement of needed transition services (as required under section 1401(a)(20)(D) of this title);

(iii) the extent to which, in the provision of the transition services, agencies are cooperating effectively, including evaluation of the extent of coordination of the staff of the agencies, of procedures regarding confidentiality, assessment of needs, and referrals, and coordination regarding data bases and training;

(iv) the extent to which obstacles exist regarding cooperation and coordination among agencies in the provision of the transition services, and the extent to which Federal law creates disincentives to such cooperation and coordination; and

(v) the extent to which the transition services have been provided in a cost-effective manner.

(C) The evaluation carried out pursuant to subparagraph (A) shall include recommendations on the manner in which the program under subsection (e) of this section can be improved.

(D) In the annual report required under section 1418(g) of this title, the Secretary shall include a report of the activities

and results associated with the agreement under subparagraph (A).

*(g) Coordination of educational programs with vocational rehabilitation projects*

The Secretary, as appropriate, shall coordinate programs described under subsection (a) of this section with projects developed under section 777a of title 29, the Job Training Partnership Act (JTPA) [29 U.S.C. 1501 et seq.], and the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.].

(Pub. L. 91-230, title VI, Sec. 626, formerly Sec. 625, Apr. 13, 1970, 84 Stat. 183, renumbered Pub. L. 93-380, title VI, Sec. 616, Aug. 21, 1974, 88 Stat. 584, and amended Pub. L. 98-199, Secs. 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367; Pub. L. 99-457, title III, Sec. 306, Oct. 8, 1986, 100 Stat. 11638; Pub. L. 100-630, title I, Sec. 103(g), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title III, Sec. 306, title IX, Sec. 904(b)(119)-(127), Oct. 30, 1990, 104 Stat. 1124, 1147.)

#### **Sec. 1426. Programs for children and youth with serious emotional disturbance**

(a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies to establish projects for the purpose of improving special education and related services to children and youth with serious emotional disturbance. Such projects may include—

(1) studies regarding the present state of special education and related services to such children and youth and their families, including information and data to enable assessments of the status of such services over time;

(2) developing methodologies and curricula designed to improve special education and related services for these children and youth;

(3) developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and the increased use of school district-based programs (which may include day treatment programs, after-school programs, and summer programs);

(4) developing the knowledge, skills, and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

(5) developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

(b)(1) The Secretary is authorized to make grants, on a competitive basis, to local educational agencies in collaboration with mental health entities to provide services for children and youth with serious emotional disturbance. Such demonstration projects shall—

(A) increase the availability, access, and quality of community services for such children and youth and their families;



(B) improve working relationships among education, school, and community mental health and other relevant personnel, families of such children and youth, and their advocates;

(C) target resources to school settings, such as providing access to school and/or community mental health professionals and other community resources for students with serious emotional disturbance who are in community school settings; and

(D) take into account the needs of minority children and youth in all phases of project activity.

(2) Funds received under this subsection may also be used to facilitate interagency and private sector resource pooling to improve services for such children and youth and to provide information and training for those involved with, or who could be involved with, such children and youth.

(c) Each project assisted under this section shall—

(1) apply existing research outcomes from multi-disciplinary fields;

(2) use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth;

(3) report on the effectiveness of such project; and

(4) disseminate the findings of such project, where appropriate, in accordance with section 1409(g) of this title.

(Pub. L. 91-230, title VI, Sec. 627, formerly Sec. 626, Apr. 13, 1970, 84 Stat. 184, renumbered and amended Pub. L. 93-380, title VI, Secs. 616, 617, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, Sec. 2, June 17, 1977, 91 Stat. 230; Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1368; Pub. L. 101-476, title III, Sec. 307, Oct. 30, 1990, 104 Stat. 1127.)

## Sec. 1427. Authorization of appropriations

(a) There are authorized to be appropriated to carry out section 1421 of this title \$8,525,000 for fiscal year 1991, \$9,300,000 for fiscal year 1992, \$10,140,000 for fiscal year 1993, and \$11,052,000 for fiscal year 1994.

(b) There are authorized to be appropriated to carry out section 1422 of this title \$21,900,000 for fiscal year 1991, \$24,100,000 for fiscal year 1992, \$26,500,000 for fiscal year 1993, and \$29,200,000 for fiscal year 1994.

(c) There are authorized to be appropriated to carry out section 1423 of this title \$31,400,000 for fiscal year 1991, \$34,235,000 for fiscal year 1992, \$37,325,000 for fiscal year 1993, and \$40,705,000 for fiscal year 1994.

(d) There are authorized to be appropriated to carry out section 1424 of this title \$9,500,000 for fiscal year 1991, \$10,500,000 for fiscal year 1992, \$11,600,000 for fiscal year 1993, and \$12,700,000 for fiscal year 1994.

(e) There are authorized to be appropriated to carry out section 1424a of this title \$9,470,000 for fiscal year 1991, \$10,230,000 for fiscal year 1992, \$11,050,000 for fiscal year 1993, and \$11,930,000 for fiscal year 1994.

(f) There are authorized to be appropriated to carry out section 1425 of this title (except subsection (e)) \$9,800,000 for fiscal year 1991, \$10,800,000 for fiscal year 1992,

\$11,900,000 for fiscal year 1993, and \$13,050,000 for fiscal year 1994.

(g) There are authorized to be appropriated to carry out section 1425(e) of this title \$27,500,000 for fiscal year 1991, \$30,250,000 for fiscal year 1992, \$33,275,000 for fiscal year 1993, and \$36,602,000 for fiscal year 1994.

(h) There are authorized to be appropriated to carry out section 1426 of this title \$6,500,000 for fiscal year 1991, \$8,000,000 for fiscal year 1992, \$9,500,000 for fiscal year 1993, and \$11,500,000 for fiscal year 1994.

(Pub. L. 91-230, title VI, Sec. 628, as added Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1368, and amended Pub. L. 99-457, title III, Sec. 307, Oct. 8, 1986, 100 Stat. 1165; Pub. L. 101-476, title III, Sec. 308, Oct. 30, 1990, 104 Stat. 1128.)

## SUBCHAPTER IV—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES (PART D)

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1408, 1418, 1421, 1443 of this title.

### Sec. 1431. Grants for personnel training

(a) *Careers in special education; personnel training standards; costs of courses, fellowships, and traineeships; contract authority for areas of personnel shortages*

(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including university affiliated programs and satellite centers participating in programs under subchapter IV of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6061 et seq.]) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education, related services, and early intervention, including—

(A) special education teaching, including speech-language pathology and audiology, and adaptive physical education and instructional and assistive technology services,

(B) related services to children and youth with disabilities in educational settings, and other settings,

(C) special education and other careers in preschool and early intervention services for infants and toddlers with disabilities,

(D) special education leadership, including supervision and administration (at the advanced graduate, doctoral, and post-doctoral levels), special education research, and special education personnel preparation (at the doctoral and post-doctoral levels), and

(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for handicapped children.

(2)(A) The Secretary shall base the award of grants under paragraph (1) on information relating to the present and pro-



jected need for special education, related services, early intervention, and other personnel to be trained based on identified State, regional, or national shortages, including the need for personnel in the provision of special education to children of limited English proficiency, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards, and that include in their applications a detailed description of strategies that will be utilized to recruit and train members of minority groups and persons with disabilities.

(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary. Such institutions shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

(5) In making grants under subsection (a)(1) of this section, the Secretary may determine that a portion of training supported through such grants shall be conducted on an interdisciplinary basis, and shall be designed to assist special educators in properly coordinating service provision with related services personnel. To the extent feasible, training programs funded under subsection (a)(1)(B) and (a)(1)(E) of this section shall require practica to demonstrate the delivery of related services in an array of regular and special education and community settings.

(6) Nothing in this subsection shall be construed to prevent regular education or special education personnel from benefiting or participating in training activities conducted under this subsection on a preservice or inservice basis.

(7) The Secretary, in carrying out paragraph (1), shall make grants to Historically Black Colleges and Universities, and other institutions of higher education whose minority student enrollment is at least 25 percent.

*(b) Special projects for preservice training, regular educators, and inservice training of special education personnel*

The Secretary may make grants to institutions of higher education, State agencies, and other appropriate nonprofit agencies and organizations to develop and demonstrate effective

ways for preservice training programs to prepare regular educators to work with children and youth with disabilities and their families; for training teachers to work in community and school settings with school students with disabilities and their families; for inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families; for inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families; for preservice and inservice training of special education and related services personnel in the use of assistive and instructional technology to benefit infants, toddlers, children, and youth with disabilities; and for the recruitment and retention of special education, related services, and early intervention personnel. Both preservice and inservice training shall include a component that addresses the coordination among all service providers, including regular educators.

*(c) Parent training and information programs*

(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of infants, toddlers, children, and youth with disabilities and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of children with disabilities. Such grants shall be designed to meet the unique training and information needs of parents of infants, toddlers, children, and youth with disabilities living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

(A) be governed by a board of directors of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly minority parents, and that includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, and individuals with disabilities, or, if the nonprofit private organization does not have such a board, such organization shall have a membership that represents the interests of individuals with disabilities, and shall establish a special governing committee of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly parents of minority children, and which includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, to operate the training and information program under paragraph (1), and parent and professional membership of these boards or special governing committees shall be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services;



(B) serve the parents of infants, toddlers, children, and youth with the full range of disabling conditions under such grant program, and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1), and, for purposes of paragraph (1), network with clearinghouses, including those established under section 1433 of this title and other organizations and agencies, and network with other established national, State, and local parent groups representing the full range of parents of infants, toddlers, children, and youth with disabilities, especially parents of minority children.

Nothing in subparagraph (A) shall be construed to authorize or permit the denial to any person of the due process of law required by the United States Constitution.

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under paragraph (1) will—

(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas,

(B) be targeted to parents of children with disabilities in both urban and rural areas or on a State or regional basis,

(C) serve parents of minority children with disabilities representative to the proportion of the minority population in the areas being served, and

(D) be funded at a sufficient size, scope, and quality to ensure that the program is adequate to serve the parents in the area.

(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

(A) better understand the nature and needs of the disabling conditions of children,

(B) provide followup support for educational programs of children with disabilities,

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

(D) participate in educational decisionmaking processes including the development of a the<sup>1</sup> individualized educational program of a child with a disability,

(E) obtain appropriate information about the range of options, programs, services, and resources available at the

national, State, and local levels to assist infants, toddlers, children, and youth with disabilities and their families, and

(F) understand the provisions for the education of infants, toddlers, children, and youth with disabilities under this Act.

<sup>1</sup> So in original.

(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult and network with appropriate national, State, regional, and local agencies and organizations, such as protection and advocacy agencies, that serve or assist infants, toddlers, children, and youth with disabilities and their families and are located in the jurisdictions served by the program.

(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

(9) After the establishment in each State of a parent training and information center, the Secretary shall provide for the establishment of 3 experimental centers to serve large numbers of parents of children with disabilities located in high density areas that do not have such centers and 2 such centers to serve large numbers of parents of children with disabilities located in rural areas.

(10) Effective for fiscal year 1991 and every year thereafter, the Secretary shall obtain data concerning programs and centers assisted under this subsection on—

(A) the number of parents provided information and training by disability category of their children,

(B) the types and modes of information or training provided,

(C) strategies used to reach and serve parents of minority infants, toddlers, children, and youth with disabilities,

(D) the number of parents served as a result of activities described under subparagraph (C),

(E) activities to network with other information clearinghouses and parent groups as required in subsection (c)(2)(C) of this section, and

(F) the number of agencies and organizations consulted with at the national, State, regional, and local levels.

The Secretary shall include a summary of this information in the annual report to Congress as required in section 1418(g) of this title.

(Pub. L. 91-230, title VI, Sec. 631, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, Secs. 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1369; Pub. L. 99-457, title III, Sec. 308, Oct. 8, 1986, 100 Stat. 1165; Pub. L. 100-630, title I, Sec. (b), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title IV, Sec. 401, title IX, Sec. 901(b)(129)-(142), Oct. 30, 1990, 104 Stat. 1129, 1148.)

## Sec. 1432. Grants to State educational agencies and institutions for traineeships

(a) The Secretary shall make a grant of sufficient size and scope to each State educational agency for the purposes



described in subsection (c) of this section and, in any State in which the State educational agency does not apply for such a grant, to an institution of higher education within such State for such purposes.

(b) The Secretary may also make a limited number of grants to State educational agencies on a competitive basis for the purposes described in subsection (c) of this section. In any fiscal year, the Secretary may not expend for purposes of this subsection an amount that exceeds 10 percent of the amount expended for purposes of this section in the preceding fiscal year.

(c) Grants made under this section shall be for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare special and regular education, related services and early intervention personnel to meet the needs of infants, toddlers, children, and youth with disabilities or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 and under section 1476(b)(8) of this title, and to assist the State in developing and maintaining such systems and conducting personnel recruitment and retention activities.

(d) The Secretary is authorized to provide directly or by grant, contract, or cooperative agreement, technical assistance to State educational agencies on matters pertaining to the effective implementation of section 1413(a)(3) of this title.

(Pub. L. 91-230, title VI, Sec. 632, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, Secs. 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1371; Pub. L. 99-457, title III, Sec. 309, Oct. 8, 1986, 100 Stat. 1168; Pub. L. 100-630, title I, Sec. 104(c), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title IV, Sec. 402, title IX, Sec. 901(b)(143), Oct. 30, 1990, 104 Stat. 1132, 1148.)

### Sec. 1433. Clearinghouses

*(a) National clearinghouses on: children and youth with disabilities; postsecondary education for individuals with disabilities; careers in special education; establishment; statement of purposes*

The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public agencies or private nonprofit organizations or institutions for the establishment of three national clearinghouses: on children and youth with disabilities; on postsecondary education for individuals with disabilities; and on careers in special education, to—

- (1) collect, develop, and disseminate information,
- (2) provide technical assistance,
- (3) conduct coordinated outreach activities,
- (4) provide for the coordination and networking with other relevant national, State, and local organizations and information and referral resources,
- (5) respond to individuals and organizations seeking information, and
- (6) provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

*(b) National clearinghouse for children and youth with disabilities; duties*

The national clearinghouse for children and youth with disabilities shall:

(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

(2) Participate in programs and services related to disability issues for providing outreach, technical assistance, collection, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

(6) In carrying out the activities in this subsection, the clearinghouse will include strategies to disseminate information to underrepresented groups such as those with limited English proficiency.

*(c) National clearinghouse on postsecondary education for individuals with disabilities; duties*

The national clearinghouse on postsecondary education for individuals with disabilities shall:

(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies, procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

(2) Identify areas of need for additional information.

(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating infor-



mation and promoting awareness of issues relevant to the education of individuals with disabilities after high school and referring individuals who request information to local resources.

(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them to make appropriate decisions about postsecondary education and training.

(d) *National clearinghouse on careers in special education; duties*

The national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities shall:

(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identify training programs available around the country.

(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

(e) *Criteria for awarding grants, contracts and cooperative agreements at national level*

(1) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in performing the functions established in this section; and with the ability to conduct such projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies and organizations.

(2) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in providing informational services to minorities and minority organizations.

(f) *Information gathering on each project*

(1) Beginning in fiscal year 1991, and for each year thereafter, the Secretary shall obtain information on each project assisted under this section, including—

(A) the number of individuals served by disability category, as appropriate, including parents, professionals, students, and individuals with disabilities;

(B) a description of responses utilized;

(C) a listing of new products developed and disseminated; and

(D) a description of strategies and activities utilized for outreach to urban and rural areas with populations of minorities and underrepresented groups.

(2) A summary of the data required by this subsection shall be included in the annual report to Congress required under section 1418 of this title.

(Pub. L. 91-230, title VI, Sec. 633, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, Secs. 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1371; Pub. L. 99-457, title III, Sec. 310, Oct. 8, 1986, 100 Stat. 1168; Pub. L. 100-630, title I, Sec. 104(d), Nov. 7, 1988, 102 Stat. 3299; Pub. L. 101-476, title IV, Sec. 403, title IX, Sec. 901(b)(144), Oct. 30, 1990, 104 Stat. 1133, 1149.)

## Sec. 1434. Reports to the Secretary

(a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this subchapter during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training;

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training; and

(3) information described in section 1431(c)(9) of this title and section 1433(f)(1) of this title, as applicable.

(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 1418 of this title.

(Pub. L. 91-230, title VI, Sec. 634, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, Secs. 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 101-476, title IV, Sec. 404, Oct. 30, 1990, 104 Stat. 1135.)

## Sec. 1435. Authorization of appropriations

(a) *In general*

(1) There are authorized to be appropriated to carry out this subchapter (other than sections 1431(a)(7), 1431(c), and 1433 of this title) \$94,725,000 for fiscal year 1991, \$103,255,000 for fiscal year 1992, \$113,580,000 for fiscal year 1993, and \$123,760,000 for fiscal year 1994.

(2) There are authorized to be appropriated to carry out section 1431(a)(7) of this title \$19,250,000 for fiscal year 1991, \$21,175,000 for fiscal year 1992, \$23,292,500 for fiscal year 1993, and \$25,621,750 for fiscal year 1994.

(3) There are authorized to be appropriated to carry out section 1431(c) of this title \$11,000,000 for fiscal year 1991, \$12,100,000 for fiscal year 1992, \$13,300,000 for fiscal year 1993, and \$14,600,000 for fiscal year 1994.

(4) There are authorized to be appropriated to carry out section 1433 of this title \$2,900,000 for fiscal year 1991, \$2,465,000 for fiscal year 1992, \$2,710,000 for fiscal year 1993, and \$2,960,000 for fiscal year 1994.

(b) *Personnel training for careers in special education and early intervention*



Of the funds appropriated pursuant to subsection (a) of this section for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 1431(a)(1) of this title.

*(c) Parent training and information programs*

Of the funds appropriated under subsection (a) of this section for any fiscal year, the Secretary shall reserve 10 per cent for activities under section 1431(c) of this title.

(Pub. L. 91-230, title VI, Sec. 635, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, Secs. 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 99-457, title III, Sec. 311, Oct. 8, 1986, 100 Stat. 1169; Pub. L. 101-476, title IV, Sec. 405, Oct. 30, 1990, 104 Stat. 1135.)

**Sec. 1436. Omitted**

**SUBCHAPTER V—RESEARCH IN THE EDUCATION  
OF HANDICAPPED INDIVIDUALS  
(PART E)**

*Subchapter Referred to in Other Sections*

This subchapter is referred to in sections 1408, 1418, 1421, 1443 of this title.

**Sec. 1441. Research and demonstration projects in  
education of handicapped children**

*(a) Grant and contract authority; statement of objectives;  
description of specific activities*

The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, other public agencies and nonprofit private organizations for the purpose of advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn. The activities supported under this section shall support innovation, development, exchange, and use of such advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities. In carrying out this section, the Secretary may support a wide range of research and related activities designed to—

(1) advance knowledge regarding the provision of instruction and other interventions to infants, toddlers, children, and youth with disabilities including—

(A) the organization, synthesis, and interpretation of current knowledge and the identification of knowledge gaps;

(B) the identification of knowledge and skill competencies needed by personnel providing special education, related services, and early intervention services;

(C) the improvement of knowledge regarding the developmental and learning characteristics of infants, toddlers, children, and youth with disabilities in order to improve the design and effectiveness of interventions and instruction;

(D) the evaluation of approaches and interventions;

(E) the development of instructional strategies, techniques, and activities;

(F) the improvement of curricula and instructional tools such as textbooks, media, materials, and technology;

(G) the development of assessment techniques, instruments (including tests, inventories, and scales), and strategies for measurement of progress and the identification, location, and evaluation of infants, toddlers, children, and youth with disabilities for the purpose of determining eligibility, program planning, and placement for special education, related services, and early intervention services. Particular attention should be given to the development of alternative assessment procedures and processes for minority individuals and those with limited English proficiency;

(H) the testing of research findings in practice settings to determine the application, usability, effectiveness, and generalizability of such research findings;

(I) the improvement of knowledge regarding families, minorities, limited English proficiency, and disabling conditions; and

(J) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice; and

(2) advance the use of knowledge by personnel providing special education, related services, and early intervention services including—

(A) the improvement of knowledge regarding how such individuals learn new knowledge and skills, and strategies for effectively facilitating such learning in preservice, inservice, and continuing education;

(B) the organization, integration, and presentation of knowledge so that such knowledge can be incorporated and imparted in personnel preparation, continuing education programs, and other relevant training and communication vehicles; and

(C) the expansion and improvement of networks that exchange knowledge and practice information.

*(b) Qualifications of applicant*

In carrying out subsection (a) of this section, the Secretary shall consider the special education, related services, or early intervention and research experience of applicants.

*(c) Publication of research priorities in Federal Register*

The Secretary shall publish proposed priorities under this subchapter in the Federal Register not later than 12 months preceding the fiscal year for which they are being announced, and shall allow a period of 60 days for public comments and suggestions. The Secretary shall, after analyzing and considering the public comments, publish final priorities in the Federal Register not later than 90 days after the close of the comment period.

*(d) Reports of research projects; index of research projects for annual report*

The Secretary shall provide an index (including the title of each project and the name and address of the funded organi-



zation) of all projects conducted under this subchapter in the prior fiscal year in the annual report described under section 1418 of this title.

(e) *Coordination of related research priorities; provide information on research priorities to Federal entities*

The Secretary shall—

(1) coordinate the priorities established under subsection (b) of this section with research priorities established by the National Institute for Disability and Rehabilitation Research and other appropriate agencies conducting research pertaining to the education of individuals with disabilities; and

(2) provide information concerning priorities established under subsection (b) of this section to the National Council on Disability and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children.

(f) *Establishment of information center(s) on attention deficit disorder; grant and contract authority; description of activities; priorities in awarding grants*

(1) The Secretary shall make grants or enter into contracts or cooperative agreements for the establishment of a center or centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder with respect to the following:

(A) Assessment techniques, instruments, and strategies used for identification, location, evaluation and for measurement of progress.

(B) Knowledge and skill competencies needed by professionals providing special and regular education and related services.

(C) Environmental, organizational, resource, and other conditions necessary for effective professional practice.

(D) Developmental and learning characteristics.

(E) Instructional strategies, techniques, and activities.

(F) Curricula and instructional tools such as textbooks, media, materials, and technology.

(G) Strategies, techniques, and activities related to involvement of families.

(2) In awarding grants, contracts, and cooperative agreements under paragraph (1), the Secretary shall give priority consideration to applicants with—

(A) demonstrated knowledge concerning the disorder;

(B) proven effectiveness in performing the functions established in this subsection; and

(C) the ability to—

(i) conduct such projects;

(ii) communicate with intended consumers of information; and

(iii) maintain the necessary communication with national, regional, State, and local agencies.

(g) *Establishment of model demonstration programs; grant and contract authority; description and activities; ombudsman services*

(1) The Secretary shall make grants, or enter into contracts or cooperative agreements, for the establishment of model demonstration programs, of which some will be school-

based models, that provide the services of an ombudsman to assist in resolving problems that are barriers to appropriate educational, related services, or other services for children and youth with disabilities.

(2) Programs under paragraph (1) shall provide or identify personnel to assist children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve problems in a timely manner through dispute mediation and other methods, notwithstanding due process procedures, in order to further the delivery of appropriate education and related services. Participation in this program does not preclude or delay due process under subchapter II of this chapter.

(3) Ombudsman services for programs under paragraph (1) shall be provided by social workers, parent advocates, psychologists, and persons with similar qualifications designated by the Secretary.

(Pub. L. 91-230, title VI, Sec. 641, Apr. 13, 1970, 84 Stat. 185; Pub. L. 95-49, Sec. 4, June 17, 1977, 91 Stat. 230; Pub. L. 98-199, Secs. 3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 99-457, title III, Sec. 312, Oct. 8, 1986, 100 Stat. 1169; Pub. L. 100-630, title I, Sec. 105(b), Nov. 7, 1988, 102 Stat. 3299; Pub. L. 101-476, title V, Sec. 501, Oct. 30, 1990, 104 Stat. 1135.)

## Sec. 1442. Research and demonstration projects in physical education and recreation for children with disabilities

The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for children with disabilities, including therapeutic recreation, and to conduct research, surveys, or demonstrations relating to physical education or recreation for children with disabilities, including therapeutic recreation.

(Pub. L. 91-230, title VI, Sec. 642, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, Secs. 3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1373; Pub. L. 101-476, title V, Sec. 502, title IX, Sec. 901(b)(145), (146), Oct. 30, 1990, 104 Stat. 1138, 1149.)

## Sec. 1443. Repealed.

(Pub. L. 101-476, title V, Sec. 503, Oct. 30, 1990, 104 Stat. 1138.)

## Sec. 1444. Authorization of appropriations

For purposes of carrying out this subchapter, there are authorized to be appropriated \$21,100,000 for fiscal year 1990, \$24,650,000 for fiscal year 1991, \$27,400,000 for fiscal year 1992, \$30,200,000 for fiscal year 1993, and \$33,200,000 for fiscal year 1994.

(Pub. L. 91-230, title VI, Sec. 644, Apr. 13, 1970, 84 Stat. 186; Pub. L. 93-380, title VI, Sec. 619, Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, Sec. 5, June 17, 1977, 91 Stat. 231; Pub. L. 98-199, Sec. 12, Dec. 2, 1983, 97 Stat.



1374; Pub. L. 99-457, title III, Sec. 314, Oct. 8, 1986, 100 Stat. 1171; Pub. L. 101-476, title V, Secs. 503, 504, Oct. 30, 1990, 104 Stat. 1138.)

## SUBCHAPTER VI—INSTRUCTIONAL MEDIA FOR INDIVIDUALS WITH DISABILITIES (PART F)

### Sec. 1451. Purposes

The purposes of this subchapter are to promote—

(1) the general welfare of deaf and hard of hearing individuals by—

(A) bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

(B) providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment; and

(C) providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

(2) the educational advancement of individuals with disabilities by—

(A) carrying on research in the use of educational media for individuals with disabilities;

(B) producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities;

(C) training individuals in the use of educational media for the instruction of individuals with disabilities; and

(D) utilizing educational media to help eliminate illiteracy among individuals with disabilities;

(3) the general welfare of visually impaired individuals by—

(A) bringing to such individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

(B) ensuring access to television programming and other video materials.

(Pub. L. 91-230, title VI, Sec. 651, Apr. 13, 1970, 84 Stat. 186; Pub. L. 100-630, title I, Sec. 106(b), Nov. 7, 1988, 102 Stat. 3300; Pub. L. 101-476, title VI, Sec. 601, title IX, Sec. 901(b)(150), Oct. 30, 1990, 104 Stat. 1138-39, 1149.)

### Sec. 1452. Captioned films, television, descriptive video, and educational media for handicapped individuals

#### (a) *Establishment of loan service*

The Secretary shall establish a loan service of captioned films, descriptive video, and educational media for the purpose of making such materials available, in accordance with regulations, in the United States for nonprofit purposes to individuals

with disabilities, parents of individuals with disabilities, and other individuals directly involved in activities for the advancement of the individuals with disabilities, including for the purpose of addressing problems of illiteracy among individuals with disabilities.

#### (b) *Authority of Secretary*

The Secretary is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchase equipment necessary for the administration of this subchapter;

(3) provide, by grant or contract, for the captioning for deaf and hard of hearing individuals and video description for the visually impaired, of films, television programs, and video materials;

(4) provide, by grant or contract, for the distribution of captioned and video-described films, video materials, and other educational media and equipment through State schools for handicapped individuals, public libraries, and such other agencies or entities as the Secretary may deem appropriate to serve as local or regional centers for such distribution;

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for individuals with disabilities, for the production and distribution of educational and training films and other educational media for individuals with disabilities and the training of individuals in the use of such films and media, including the payment to those individuals of such stipends (including allowances for travel and other expenses of such individuals and their dependents) as the Secretary may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies;

(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations; and

(8) provide by grant or contract for educational media and materials for deaf and hard of hearing individuals.

#### (c) *National Theatre of the Deaf*

The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. and other appropriate non-profit organizations for the purpose of providing cultural experiences to—

(1) enrich the lives of deaf and hard of hearing children and adults,

(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, and

(3) promote the integration of hearing and deaf and hard of hearing individuals through shared cultural, educational, and social experiences.

(d) *Grant and contract authority to provide textbooks, educational materials*

(1) The Secretary is authorized to make a grant or enter into a contract for the purpose of providing current, free text-



books and other educational publications and materials to blind and other print-handicapped students in elementary, secondary, postsecondary, and graduate schools and other institutions of higher education through the medium of transcribed tapes and cassettes.

(2) For the purpose of this subsection, the term "print-handicapped" refers to any individual who is blind or severely visually impaired, or who, by reason of a physical or perceptual disability, is unable to read printed material unassisted.

(Pub. L. 91-230, title VI, Sec. 652, Apr. 13, 1970, 84 Stat. 186; Pub. L. 93-380, title VI, Sec. 620(1), Aug. 21, 1974, 88 Stat. 585; Pub. L. 94-482, title V, Sec. 501(h), Oct. 12, 1976, 90 Stat. 2237; Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 99-457, title III, Sec. 315, Oct. 8, 1986, 100 Stat. 1171; Pub. L. 100-630, title I, Sec. 106(c), Nov. 7, 1988, 102 Stat. 3300; Pub. L. 101-476, title VI, Sec. 602, title IX, Sec. 901(b)(151), (152), Oct. 30, 1990, 104 Stat. 1139, 1149.)

### Sec. 1453. Repealed.

(Pub. L. 99-457, title III, Sec. 316, Oct. 8, 1986, 100 Stat. 1171.)

### Sec. 1454. Authorization of appropriations

For the purpose of carrying out section 1452 of this title there are authorized to be appropriated \$20,010,000 for fiscal year 1991, \$22,010,000 for fiscal year 1992, \$24,200,000 for fiscal year 1993, and \$26,600,000 for fiscal year 1994.

(Pub. L. 91-230, title VI, Sec. 654, Apr. 13, 1970, 84 Stat. 187; Pub. L. 93-380, title VI, Sec. 620(2), Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, Sec. 6, June 17, 1977, 91 Stat. 231; Pub. L. 98-199, Sec. 13, Dec. 2, 1983, 97 Stat. 1374; renumbered Sec. 653 and amended Pub. L. 99-457, title III, Sec. 316, Oct. 8, 1986, 100 Stat. 1171; Pub. L. 101-476, title VI, Sec. 603, Oct. 30, 1990, 104 Stat. 1140.)

## SUBCHAPTER VII—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES (PART G)

### Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1408, 1418, 1421, 1443 of this title.

### Sec. 1461. Financial assistance

(a) The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of students with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities. In carrying out this section, the Secretary may fund projects or centers for the purposes of—

(1) determining how technology, assistive technology, media, and materials are being used in the education of individuals with disabilities and how they can be used most effectively, efficiently, and appropriately,

(2) designing and adapting technology, assistive technology, media, and materials to improve the education of students with disabilities,

(3) assisting the public and private sectors in the development and marketing of technology, assistive technology, media, and materials for the education of individuals with disabilities,

(4) disseminating information on the availability and use of technology, assistive technology, media, and materials for the education of individuals with disabilities, where appropriate, to entities described in section 1409(g) of this title, and

(5) increasing access to and use of assistive technology devices and assistive technology services in the education of infants, toddlers, children, and youth with disabilities, and other activities authorized under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 [29 U.S.C. 2201 et seq.], as such Act relates to the education of students with disabilities, and

(6) examining how these purposes can address the problem of illiteracy among individuals with disabilities.

(b)(1) With respect to new technology, media, and materials utilized with funds under this part to improve the education of students with disabilities, the Secretary shall make efforts to ensure that such instructional materials are closed captioned.

(2) The Secretary may not award a grant, contract, or cooperative agreement under paragraphs (1) through (4) of subsection (a) unless the applicant for such assistance agrees that activities carried out with the assistance will be coordinated, as appropriate, with the State entity receiving funds under title I of Public Law 100-407 [29 U.S.C. 2211 et seq.].

(Pub. L. 91-230, title VI, Sec. 661, as added Pub. L. 99-457, title III, Sec. 317, Oct. 8, 1986, 100 Stat. 1172, and amended Pub. L. 100-630, title I, Sec. 107(b), Nov. 7, 1988, 102 Stat. 3301; Pub. L. 101-476, title VII, Sec. 701, title IX, Sec. 901(b)(154)-(156), Oct. 30, 1990, 104 Stat. 1140, 1149.)

### Sec. 1462. Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated \$11,900,000 for fiscal year 1991, \$12,860,000 for fiscal year 1992, \$13,890,000 for fiscal year 1993, and \$15,000,000 for fiscal year 1994.

(Pub. L. 91-230, title VI, Sec. 662, as added Pub. L. 99-457, title III, Sec. 317, Oct. 8, 1986, 100 Stat. 1172, and amended Pub. L. 101-476, title VII, Sec. 702, Oct. 30, 1990, 104 Stat. 1141.)

## SUBCHAPTER VIII—INFANTS AND TODDLERS WITH DISABILITIES (PART H)

### Sec. 1471. Congressional findings and policy

#### (a) Findings

The Congress finds that there is an urgent and substantial need—

(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay,



(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age,

(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society, and

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

**(b) Policy**

It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities, and their families.

(Pub. L. 91-230, title VI, Sec. 671, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1145; Pub. L. 100-630, title I, Sec. 108(a), Nov. 7, 1988, 102 Stat. 3301; Pub. L. 101-476, title IX, Sec. 901(b)(158)-(161), Oct. 30, 1990, 104 Stat. 1149.)

**Sec. 1472. Definitions**

As used in this subchapter—

(1) The term “infants and toddlers with disabilities” means individuals from birth to age 2, inclusive, who need early intervention services because they—

(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psychosocial development, or self-help skills, or

(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

(2) The term “early intervention services” are developmental services which—

(A) are provided under public supervision,

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

- (i) physical development,
- (ii) cognitive development,

(iii) language and speech development,

(iv) psychosocial development, or

(v) self-help skills,

(D) meet the standards of the State, including the requirements of this subchapter,

(E) include—

(i) family training, counseling, and home visits,

(ii) special instruction,

(iii) speech pathology and audiology,

(iv) occupational therapy,

(v) physical therapy,

(vi) psychological services,

(vii) case management services,

(viii) medical services only for diagnostic or evaluation purposes,

(ix) early identification, screening, and assessment services,

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services, and

(xi) social work services,

(F) are provided by qualified personnel, including—

(i) special educators,

(ii) speech and language pathologists and audiologists,

(iii) occupational therapists,

(iv) physical therapists,

(v) psychologists,

(vi) social workers,

(vii) nurses, and

(viii) nutritionists, and

(G) are provided in conformity with an individualized family service plan adopted in accordance with section 1477 of this title.

(3) The term “developmental delay” has the meaning given such term by a State under section 1476(b)(1) of this title.

(4) The term “Council” means the State Interagency Coordinating Council established under section 1482 of this title.

(Pub. L. 91-230, title VI, Sec. 672, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1146, and amended Pub. L. 100-630, title I, Sec. 108(b), Nov. 7, 1988, 102 Stat. 3301; Pub. L. 101-476, title VIII, Sec. 801, title IX, Sec. 901(b)(162), (163), Oct. 30, 1990, 104 Stat. 1141, 1149.)

**Sec. 1473. General authority**

The Secretary shall, in accordance with this subchapter, make grants to States (from their allocations under section 1484 of this title) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

(Pub. L. 91-230, title VI, Sec. 673, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1147, and amended Pub. L. 101-476, title IX, Sec. 901(b)(164), Oct. 30, 1990, 104 Stat. 1150.)



#### Sec. 1474. General eligibility

In order to be eligible for a grant under section 1473 of this title for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 1478 of this title) that the State has established a State Interagency Coordinating Council which meets the requirements of section 1482 of this title.

(Pub. L. 91-230, title VI, Sec. 674, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1147.)

#### Sec. 1475. Continuing eligibility

##### (a) *First two years*

In order to be eligible for a grant under section 1473 of this title for the first or second year of a State's participation under this subchapter, a State shall include in its application under section 1478 of this title for that year an assurance that funds received under section 1473 of this title shall be used to assist the State to plan, develop, and implement the statewide system required by section 1476 of this title.

##### (b) *Third and fourth year*

(1) In order to be eligible for a grant under section 1473 of this title for the third or fourth year of a State's participation under this subchapter, a State shall include in its application under section 1478 of this title for that year information and assurances demonstrating to the satisfaction of the Secretary that—

(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 1476 of this title or obtained a waiver from the Secretary under paragraph (2),

(B) funds shall be used to plan, develop, and implement the statewide system required by section 1476 of this title, and

(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 1473 of this title, except that in order to comply with section 1476(b)(4) of this title, a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 1473 of this title during such third year even if the State has not adopted the policy required by paragraph

(1)(A) before receiving assistance if the State demonstrates in its application—

(A) that the State has made a good faith effort to adopt such a policy,

(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

##### (c) *Fifth and succeeding years*

In order to be eligible for a grant under section 1473 of this title for a fifth and any succeeding year of a State's partici-

pation under this subchapter, a State shall include in its application under section 1478 of this title for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 1476 of this title and a description of services to be provided under section 1476(b)(2) of this title.

##### (d) *Exception*

Notwithstanding subsections (a) and (b) of this section, a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to children with disabilities from birth through age 2, inclusive, shall be eligible for a grant under section 1473 of this title for the first through fourth years of a State's participation under this subchapter.

(Pub. L. 91-230, title VI, Sec. 675, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1147; Pub. L. 100-630, title I, Sec. 108(c), Nov. 7, 1988, 102 Stat. 3301; Pub. L. 101-476, title IX, Sec. 901(b)(165), Oct. 30, 1990, 104 Stat. 1150.)

#### Sec. 1476. Requirements for statewide system

##### (a) *In general*

A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families shall include the minimum components under subsection (b) of this section.

##### (b) *Minimum components*

The statewide system required by subsection (a) of this section shall include, at a minimum—

(1) a definition of the term "developmentally delayed" that will be used by the State in carrying out programs under this subchapter,

(2) timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State before the beginning of the fifth year of a State's participation under this subchapter,

(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability in the State and the needs of the families to appropriately assist in the development of the infant or toddler with a disability,

(4) for each infant and toddler with a disability in the State, an individualized family service plan in accordance with section 1477 of this title, including case management services in accordance with such service plan,

(5) a comprehensive child find system, consistent with subchapter II of this chapter, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources,

(6) a public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services, and procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the



availability of early intervention services as required under this paragraph to parents of infants with disabilities,

(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

(8) a comprehensive system of personnel development, including training of primary referral sources respecting the basic components of early intervention services available in the State,

(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration, supervision, and monitoring of programs and activities receiving assistance under section 1473 of this title to ensure compliance with this subchapter,

(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

(C) the assignment of financial responsibility to the appropriate agency,

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

(E) the resolution of intra-and interagency disputes, and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements,

(11) a procedure for securing timely reimbursement of funds used under this subchapter in accordance with section 1481(a) of this title,

(12) procedural safeguards with respect to programs under this subchapter as required by section 1480 of this title,

(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require

the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

(14) a system for compiling data on the numbers of infants and toddlers with disabilities and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

(Pub. L. 91-230, title VI, Sec. 676, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1148, and amended Pub. L. 100-630, title I, Sec. 108(d), Nov. 7, 1988, 102 Stat. 3301; Pub. L. 101-476, title VIII, Sec. 802, title IX, Sec. 901(b)(166)-(173), Oct. 30, 1990, 104 Stat. 1141, 1150.)

## Sec. 1477. Individualized family service plan

### (a) *Assessment and program development*

Each infant or toddler with a disability and the infant's or toddler's family shall receive—

(1) a multidisciplinary assessment of unique needs and the identification of services appropriate to meet such needs, and

(2) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d) of this section.

### (b) *Periodic review*

The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

### (c) *Promptness after assessment*

The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) of this section is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

### (d) *Content of plan*

The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, language and speech development, psychosocial development, and self-help skills, based on acceptable objective criteria,

(2) a statement of the family's strengths and needs relating to enhancing the development of the family's infant or toddler with a disability,

(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary,

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,



(5) the projected dates for initiation of services and the anticipated duration of such services,

(6) the name of the case manager from the profession most immediately relevant to the infant's or toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

(7) the steps to be taken supporting the transition of the toddler with a disability to services provided under subchapter II of this chapter to the extent such services are considered appropriate.

(Pub. L. 91-230, title VI, Sec. 677, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1149; Pub. L. 100-630, title I, Sec. 108(f), Nov. 7, 1988, 102 Stat. 3301; Pub. L. 101-476, title IX, Sec. 901(b)(174)-(176), Oct. 30, 1990, 104 Stat. 1150.)

## Sec. 1478. State application and assurances

### (a) Application

Any State desiring to receive a grant under section 1473 of this title for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1473 of this title,

(2) information demonstrating eligibility of the State under section 1474 of this title,

(3) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 1475 of this title,

(4)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

(5) a description of the uses for which funds will be expended in accordance with this subchapter and for, the fifth and succeeding fiscal years, a description of the services to be provided,

(6) a description of the procedure used to ensure an equitable distribution of resources made available under this subchapter among all geographic areas within the State, and

(7) such other information and assurances as the Secretary may reasonably require by regulation.

### (b) Statement of assurances

Any State desiring to receive a grant under section 1473 of this title shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

(1) assure that funds paid to the State under section 1473 of this title will be expended in accordance with this subchapter,

(2) contain assurances that the State will comply with the requirements of section 1481 of this title,

(3) provide satisfactory assurance that the control of funds provided under section 1473 of this title, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this subchapter and that a public agency will administer such funds and property,

(4) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this subchapter, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this subchapter,

(5) provide satisfactory assurance that Federal funds made available under section 1473 of this title (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant such State and local funds,

(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 1473 of this title to the State, and

(7) such other information and assurances as the Secretary may reasonably require by regulation.

### (c) Approval of application and assurances required

No State may receive a grant under section 1473 of this title unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

(Pub. L. 91-230, title VI, Sec. 678, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1150, and amended Pub. L. 100-630, title I, Sec. 108(g), Nov. 7, 1988, 102 Stat. 3302; Pub. L. 101-476, title IX, Sec. 901(b)(177), Oct. 30, 1990, 104 Stat. 1150.)

## Sec. 1479. Uses of funds

In addition to using funds provided under section 1473 of this title to plan, develop, and implement the statewide system required by section 1476 of this title, a State may use such funds—

(1) for direct services for infants and toddlers with disabilities and their families that are not otherwise provided from other public or private sources, and

(2) to expand and improve on services for infants and toddlers with disabilities and their families that are otherwise available.

(Pub. L. 91-230, title VI, Sec. 679, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1151, and amended Pub. L. 100-630, title I, Sec. 108(h), Nov. 7, 1988, 102 Stat. 3302; Pub. L. 101-476, title IX, Sec. 901(b)(178), Oct. 30, 1990, 104 Stat. 1150.)



**Sec. 1480. Procedural safeguards**

The procedural safeguards required to be included in a statewide system under section 1476(b)(12) of this title shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information.

(3) The opportunity for parents or a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(4) Procedures to protect the rights of the infant or toddler with a disability whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

(5) Written prior notice to the parents or guardian of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant or toddler with a disability.

(6) Procedures designed to assure that the notice required by paragraph (5) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(7) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

(Pub. L. 91-230, title VI, Sec. 680, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1152, and amended Pub. L. 100-630, title I, Sec. 108(j), Nov. 7, 1988, 102 Stat. 3302; Pub. L. 101-476, title IX, Sec. 901(b)(179), (180), Oct. 30, 1990, 104 Stat. 1150.)

**Sec. 1481. Payor of last resort****(a) Nonsubstitution**

Funds provided under section 1473 of this title may not be used to satisfy a financial commitment for services which

would have been paid for from another public or private source but for the enactment of this subchapter, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 1473 of this title may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

**(b) Reduction of other benefits**

Nothing in this subchapter shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act [42 U.S.C. 701 et seq.] (relating to maternal and child health) or title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (relating to medicaid for infants or toddlers with disabilities) within the State.

(Pub. L. 91-230, title VI, Sec. 681, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1152, and amended Pub. L. 100-630, title I, Sec. 108(j), Nov. 7, 1988, 102 Stat. 3302; Pub. L. 101-476, title IX, Sec. 901(b)(181), Oct. 30, 1990, 104 Stat. 1150.)

**Sec. 1482. State Interagency Coordinating Council****(a) Establishment**

(1) Any State which desires to receive financial assistance under section 1473 of this title shall establish a State Interagency Coordinating Council composed of 15 members.

(2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

**(b) Composition**

The Council shall be composed of—

(1) at least 3 parents of handicapped infants or toddlers or handicapped children aged 3 through 6, inclusive,

(2) at least 3 public or private providers of early intervention services,

(3) at least one representative from the State legislature,

(4) at least one person involved in personnel preparation,

(5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers, and

(6) others selected by the Governor.

**(c) Meetings**

The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

**(d) Management authority**

Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this subchapter to hire staff, and obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this subchapter.

**(e) Functions of Council**

The Council shall—



(1) advise and assist the lead agency designated or established under section 1476(b)(9) of this title in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

(2) advise and assist the lead agency in the preparation of applications and amendments thereto, and

(3) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants or toddlers with disabilities and their families operated within the State.

*(f) Conflict of interest*

No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

*(g) Use of existing Councils*

To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 1473 of this title, such State shall establish a council that complies in full with this section.

(Pub. L. 91-230, title VI, Sec. 682, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1153, and amended Pub. L. 100-630, title I, Sec. 108(k), Nov. 7, 1988, 102 Stat. 3302; Pub. L. 101-476, title IX, Sec. 901(b)(182), Oct. 30, 1990, 104 Stat. 1150.)

### Sec. 1483. Federal administration

Sections 1416, 1417, and 1420 of this title shall, to the extent not inconsistent with this subchapter, apply to the program authorized by this subchapter, except that—

(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 1476(b)(9) of this title,

(2) any reference to the education of children with disabilities and the education of all children with disabilities and the provision of free public education to all children with disabilities shall be deemed to be a reference to the provision of services to infants and toddlers with disabilities in accordance with this subchapter, and

(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this subchapter.

(Pub. L. 91-230, title VI, Sec. 683, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1154, and amended Pub. L. 101-476, title IX, Sec. 901(b)(183), (184), Oct. 30, 1990, 104 Stat. 1151.)

### Sec. 1484. Allocation of funds

*(a) Territories and insular possessions*

From the sums appropriated to carry out this subchapter for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the

Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

*(b) Payments to Secretary of the Interior for assistance to Indians*

(1) The Secretary shall make payments to the Secretary of the Interior according to the need for such assistance for the provision of early intervention services to infants and toddlers with disabilities and their families on reservations serviced by the elementary and secondary schools operated for Indians by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this subchapter for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which meets the requirements of section 1478 of this title and which is approved by the Secretary. Section 1416 of this title shall apply to any such application.

*(c) States*

(1) For each of the fiscal years 1987 through 1991 from the funds remaining after the reservation and payments under subsections (a) and (b) of this section, the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State shall receive less than 0.5 percent of such remainder.

(2) For the purpose of paragraph (1)—

(A) the terms “infants” and “toddlers” mean children from birth to age 2, inclusive, and

(B) the term “State” does not include the jurisdictions described in subsection (a) of this section.

*(d) Election by State not to receive allotment*

If any State elects not to receive its allotment under subsection (c)(1) of this section, the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

(Pub. L. 91-230, title VI, Sec. 684, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1154, and amended Pub. L. 101-476, title IX, Sec. 901(b)(185), Oct. 30, 1990, 104 Stat. 1151.)

### Sec. 1485. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$50,000,000 for fiscal year 1987, \$75,000,000 for fiscal year 1988, and such sums as may be necessary for each of the 3 succeeding fiscal years.

(Pub. L. 91-230, title VI, Sec. 685, as added Pub. L. 99-457, title I, Sec. 101(a), Oct. 8, 1986, 100 Stat. 1155.)



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